APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1153

D. LOUIS ABOOD, *et al.*,

Appellants,

v.

DETROIT BOARD OF EDUCATION, *et al,*

Appellees.

CHRISTINE WARCZAK, *et al.*,

Appellants,

v.

DETROIT BOARD OF EDUCATION, *et al.*,

Appellees.

ON APPEAL FROM THE COURT OF APPEALS OF MICHIGAN

APPEAL DOCKETED FEBRUARY 13, 1976
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INDEX TO APPENDIX*

*The parts of the record listed were filed in both *Abood* and *Warczak* unless otherwise indicated.

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APPENDIX

RELEVANT DOCKET ENTRIES*

Wayne County Circuit Court

11-7-69	Complaint filed. Summons issued. [*Warczak*]
11-12-69	Motion by Det. Federation of Teachers et al for Summary Judgment & Notice of Hearing filed. [*Warczak*]
12-23-69	Answer filed (Det. Bd. of Ed.), Mot. for Summary Jdmt. filed. [*Warczak*]
1-12-70	Affidavits (6). [*Warczak*]
1-12-70	Plaintiffs' Offer of Proof. [*Warczak*]
1-13-70	Parties again present. Hearing concluded. Motion taken under advisement. Ct. sheet. C. Kaufman. [*Warczak*]
1-16-70	Amended Complaint – filed. [*Warczak*]
1-19-70	Opinion S & F C. Kaufman. [*Warczak*]
1-23-70	Summary Judgment for Defts. S&F C. Kaufman. [*Warczak*]
1-26-70	Motion to Amend the Decision and Order filed. [*Warczak*]
1-30-70	Heard-Motion to amend decision denied. Ct. sheet. C. Kaufman. [*Warczak*]
	Michigan Court of Appeals
2-2-70	Claim of Appeal [*Warczak*]
	Wayne County Circuit Court

*Entries are for both *Abood* and *Warczak* unless otherwise indicated.

2-6-70	Order denying pltfs' motion to amend decision & order S&F C. Kaufman [*Warczak*]
4-23-70	Complaint filed. Summons issued. [*Abood*]
5-20-70	Answer filed (all). [*Abood*]
	Michigan Supreme Court
12-1-70	Application filed by-pass [*Warczak*]
12-30-70	Opposition to application received and filed. [*Warczak*]
1-21-71	Ordered and held in abeyance pending 53008. Counsel granted leave to file amicus in 53008. [*Warczak*]
	Michigan Court of Appeals
1-17-72	Order – held in abeyance pending decision by Supreme Court in Smigel V Southgate Community School District [*Warczak*]
	Michigan Supreme Court
12-28-72	Granted – Circuit court order vacated and set aside, remanded for further proceedings. No costs. Record returned to circuit ct. [*Warczak*]
1-16-73	Motion for rehearing (reconsideration) filed. [*Warczak*]
2-7-73	Opposition to motion filed. [*Warczak*]
2-14-73	Motion denied [*Warczak*]
	Wayne County Circuit Court
6-18-73	Notice of hearing and mot. for suspension of dues deduction authorizations and affidavit and memorandum brief in support thereof. [*Warczak*]
7-5-73	Answer to motion to suspend dues deduction authorizations filed. [*Warczak*]

7-5-73	Praecipe for Motion for Summary Judgment for Defendants.
7-13-73	Answer and Memorandum in Opposition to Motion of Defendants for Summary Judgment in Their Behalf, filed.
7-13-73	Supplement & Amendment to Answer of Defendants filed. [*Abood*]
11-7-73	Opinion S/F C. Kaufman.
12-5-73	Summary judgment for defendants upon remand S/F C. Kaufman.
12-21-73	Motion for rehearing of order denying motion, etc, affidavit, brief, Notice of Hearing Filed, Proof of Service, Filed
12-28-73	Answer of defts in opposition to pltfs motion, etc, affidavit, Proof of Service, Filed
1-4-74	Motion for rehearing – heard & denied – ct. sheet C. Kaufman
1-15-74	Motion to settle order denying pltfs motion for rehearing, affidavit, Notice of Hearing Filed, Proof of Service, Filed
1-23-74	Motion re presentation of order heard & resolved – ct sheet C. Kaufman
1-24-74	Order denying pltfs motion for rehearing S/F C. Kaufman
	Michigan Court of Appeals
2-11-74	Claim of Appeal
3-22-74	Order on Court's own motion consolidate 19523 & 19465
2-5-75	Case Heard
3-31-75	Opinion date
4-18-75	Motion for clarification by appellee: Application for rehearing by appellant
5-5-75	Answer to rehearing

5-15-75	Order deny application for rehearing; deny motion for clarification
	Michigan Supreme Court
6-3-75	Appeal Filed.
	Michigan Court of Appeals
6-10-75	Order – judgment reversed and remanded; no costs, public question*
	Michigan Supreme Court
7-7-75	Answer and brief in opposition filed.
9-17-75	Application denied.
	Wayne County Circuit Court
9-25-75	Notice [of Receipt of Record on Appeal from the Supreme Court], filed.
11-28-75	Notice [of Appeal to the United States Supreme Court], filed.

*Though the docket entry is 6-10-75, the order itself shows that it was entered on 3-31-75.

***Warczak* Amended Complaint**
[Filed January 16, 1970]

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

CHRISTINE WARCZAK, ERNEST C. SMITH, JUDITH KENNEDY, BESSIE PETRONE, LeROY ROWLEY, GERALD GOLDEN, YOLANDA BONE, CHRISTINE NELSON, DOUGLAS L. ROESELER, DIANA M. KLAWITTER, BRENDA C. JETT, RICHARD R. QUICK, JAMES E. DAVIS, LEOLA R. CARTER, ETHEL B. BECKWITH, RICHARD J. HENDIN, ARTHUR SCHNEIDER, EL VERA GUSTAFSON, HAROLD C. COOK, JOSEPH A. PONIATOWSKI, DONALD ASHBY, CHARLES A. BENSON, EDWARD ANTHONY, LILLIAN SMITH, SARA J. CAMERON, KATHERINE A. MORRISSEY, NOREENE LEAVELL, CHARLES KANE, MARGARET QUINN, CATALDO CASIECCI, JAMES L. BRENNAN, MARJORIE N. BOONE, MARJORIE H. HARRISON, SALLY K. HARRISON, CORA McMILLAN, DENNIS G. KELLY, and GEORGE W. CARTER,	)	Case No. 145080
Plaintiffs,	)	
vs.	)	
DETROIT BOARD OF EDUCATION, DETROIT FEDERATION OF TEACHERS, MARY ELLEN RIORDAN, JOHN ELLIOTT, MARILYN KLEIN, EDWARD VANDERLAAN, JOHN DOE and JANE DOE, as Teachers and Employees of Detroit Board of Education and Members of Detroit Federation of Teachers.	)	
Defendants.	)	

AMENDED COMPLAINT

NOW COME the Plaintiffs, by their attorneys, Keller, Thoma, McManus & Keller, and pursuant to Michigan General Court Rule 521, file this Complaint and submit the following controversy for the Court's consideration for a declaration of rights and liabilities:

1. Plaintiffs are residents of Wayne County, Michigan, and are employed as teachers by Defendant Detroit Board of Education. Several of the Plaintiffs are probationary teachers, and the remaining Plaintiffs have continuing tenure under the Michigan Teacher Tenure Act, Act No. 4, P.A. 1937 (Ex. Sess.) as amended. Plaintiffs are members of a class so numerous as to make it impractical to bring them all before the Court and hence, in order to fairly insure the adequate representation of all the members of such class, Plaintiffs bring this action on their behalf since all of the members of such class are similarly situated and have common rights in the subject matter of this action.

2. Defendant Detroit Board of Education (hereinafter referred to as the "Board") is a body corporate operating the schools situated in the City of Detroit, Wayne County, Michigan, as a school district under the general school laws of the State of Michigan. It has its office and principal place of business in the City of Detroit, Wayne County, Michigan.

3. Defendant Detroit Federation of Teachers (hereinafter referred to as the "Federation") is a labor organization having as its membership teachers employed by Defendant Board. It has its offices in the City of Detroit, Wayne County, Michigan.

4. Defendant Mary Ellen Riordan is a teacher and Employee of Defendant Detroit Board of Education and President of Defendant Detroit Federation of Teachers.

5. Defendant John Elliott is a teacher and Employee of Defendant Detroit Board of Education and first Vice President of Defendant Detroit Federation of Teachers.

6. Defendant Marilyn Klein is a teacher and Employee of Defendant Detroit Board of Education and Secretary of Defendant Detroit Federation of Teachers.

7. Defendant Edward Vanderlaan is a teacher and Employee of Defendant Detroit Board of Education and Treasurer of Defendant Detroit Federation of Teachers.

8. That Defendants John Doe and Jane Doe, whose names are unknown but whose persons are well known, are teachers and employees of Defendant Detroit Board of Education and members of Defendant Detroit Federation of Teachers. That said Defendants are representatives of a class of people so numerous as to make it impracticable to otherwise bring them all before this Court. The question involved is one of common and general interest and through the persons named as Defendants in this action, the issue here involved can be fairly tried and the rights of members of said class can be adjudicated by decrees of this Court, all as more specifically set forth in G.C.R. 208.1.

9. Effective July 1, 1969, and for the period ending July 1, 1971, Defendant Board and Defendant Federation entered into a collective bargaining agreement, embracing the salaries, hours, and other terms and conditions of employment of said teachers,

including Plaintiffs and all members of the class represented by Plaintiffs, which provides, among other things, in a clause entitled "Union Membership, Agency Shop, and Dues Deduction", as follows:

A. All employees, employed in the bargaining unit, or who become employees in the bargaining unit, who are not already members of the Union, shall, within sixty (60) days of the effective date of this provision or within sixty (60) days of the date of hire by the Board, whichever is later, become members, or in the alternative, shall, within sixty (60) days of the effective date of this provision or within sixty (60) days of their date of hire by the Board, whichever is later, as a condition of employment, pay to the Union each month a service fee in an amount equal to the regular monthly Union membership dues uniformly required of employees of the Board who are members. This provision is effective Monday, January 26, 1970.

B. The Board, upon receiving a signed statement from the Union indicating that the employee has failed to comply with this condition, shall immediately notify said employee that his services shall be discontinued at the end of the current semester, and shall dismiss said employee accordingly. The Board shall follow the dismissal procedure of the Michigan Tenure Act as applicable. The refusal of a teacher to contribute fairly to the costs of negotiation and administration of this and subsequent agreements is recognized as just and reasonable cause for termination of employment under the Michigan Tenure Act. However if at the end of the semester, a teacher, or teachers, receiving the termination notice shall then be engaged in pursuing any legal remedies contesting the discharge under this provision

before the Michigan Tenure Commission, or a court of competent jurisdiction, such teacher's service shall not be terminated until such time as such teacher or teachers have either obtained a final decision as to the validity or legality of such discharge, or such teacher or teachers have ceased to pursue the legal remedies available to them by not making a timely appeal of any decision rendered in said manner by the Tenure Commission, or a court of competent jurisdiction.

C. An employee who shall tender or authorize the deduction of membership dues (or service fees) uniformly required as a condition of acquiring or obtaining membership in the union, shall be deemed to meet the conditions of this Article so long as the employee is not more than sixty (60) days in arrears of payment of such dues (or fees).

D. The Board shall be notified, in writing, by the Union of any employee who is sixty (60) days in arrears in payment of membership dues (or fees).

E. If any provision of this Article is invalid under Federal or State law, said provision shall be modified to comply with the requirements of said Federal or State law.

F. The Union agrees that in the event of litigation against the Board, its agents or employees arising out of this provision, the Union will co-defend and indemnify and hold harmless the Board, its agents or employees for any monetary award arising out of such litigation.

G. Each employee in the bargaining unit shall execute an authorization for the deduction of Union dues or Agency Shop fees.

H. The Board shall deduct from the pay of each employee from whom it receives an authorization to do

so the required amount for the payment of Union dues or Agency Shop fees. Such dues or fees, accompanied by a list of employees from whom they have been deducted and the amount deducted from each, and by a list of employees who had authorized such educations and from whom no deduction was made and the reason therefor, shall be forwarded to the Union office no later than thirty (30) days after such deductions were made.

10. Plaintiffs aver that it is the intention of the Defendants to compel Plaintiffs, and all members of the class represented by Plaintiffs, to comply with the provisions of the so-called "Union Membership, Agency Shop, and Dues Deduction" clause (hereinafter referred to as the "Agency Shop Clause") quoted above, namely, pay to Defendant Federation each month the regular monthly union membership dues or service fees equivalent thereto, and in default of payment thereof, to dismiss Plaintiffs and all teachers similarly situated from their employment.

11. Plaintiffs and other teachers similarly situated are unwilling to pay and have refused to pay said regular monthly union membership dues or service fees equivalent thereto to Defendant Federation.

12. Plaintiffs aver that Defendant Federation, under its constitution and by-laws and its policies and practices, discriminates in favor of members and to the disadvantage of non-members, with a view to inducing and encouraging membership in the Federation in the following respects:

A. Only members are allowed to attend and vote at business meetings, including meetings for the ratification of collective bargaining contracts, of the Federation. The privilege of voting and/or holding elective office in the Federation is extended only to members in good standing. In short, non-members have no voice of any kind in the affairs of the Federation.

B. The Federation carries on various social activities for the benefit of its members which are not available to non-members as a matter of right.

13. Defendant Federation is affiliated with the Michigan Federation of Teachers, a labor organization having as its members teachers throughout the State of Michigan, and with the American Federation of Teachers, a labor organization having as its members teachers throughout the United States, and other labor organizations. Said labor organizations, including Defendant Federation, are engaged, in a number and variety of activities and programs which are economic, political, professional, scientific and religious in nature of which Plaintiffs do not approve, and in which they will have no voice, and which are not and will not be collective bargaining activities, i.e., the negotiation and administration of contracts with Defendant Board, and that a substantial part of the sums required to be paid under said Agency Shop Clause are used and will continue to be used for the support of such activities and programs, and not solely for the purpose of defraying the cost of Defendant Federation of its activities as bargaining agent for teachers employed by Defendant Board.

14. Plaintiffs aver that collective bargaining in public employment in Michigan has disadvantages which outweigh its advantages to individuals embraced within the bargaining unit, and to the public at large, particularly with reference to teachers and to Plaintiffs, among such disadvantages being the following:

A. Strikes called, sponsored and encouraged in violation of law.

B. Deprivation of individual choice in relation to many job prerequisites and privileges.

C. Loss of earnings on a long-term basis.

D. Damage suffered by individuals by reason of intra-union rivalries and inefficiency and corruption within unions.

WHEREFORE, since an actual controversy exists between Plaintiffs and members of the class represented by Plaintiffs and the Defendants herein with respect to the validity and enforceability of said Agency Shop Clause, Plaintiffs respectfully pray:

1. That the Court determine and declare the rights and other legal relationships of the parties hereto with respect to the premises.

2. That the Court determine and declare said Agency Shop Clause, and the requirements thereof, are void and of no effect, and are contrary to the provisions of the Constitution of the United States and the State of Michigan, and to the statutes of the State of Michigan, *inter alia*, in that

A. The requirement of the payment by Plaintiffs and other teachers similarly situated of compulsory union membership dues or service fees deprives them of their right to freedom of association, freedom from association, freedom of thought, and their right to privacy contrary to the First, Third, Fourth, Fifth, Ninth, and Fourteenth Amendments and their penumbras, to the Constitution of the United States and Article I of the Constitution of the State of Michigan, 1963.

B. The requirement of the payment by Plaintiffs and other teachers similarly situated of compulsory union membership dues or service fees deprives them of their right to work and of their liberty and property without due process of law and denies to them the equal protection of the laws, contrary to the Fourteenth Amendment to the Constitution of the United States

and Article I of the Constitution of the State of Michigan, 1963.

C. That Plaintiffs are deprived of their constitutional rights and privileges, as set forth in subsection A and B, by further reasons that Defendant Federation is affiliated with the Michigan Federation of Teachers and other labor organizations. Said labor organizations, including Defendant Federation, are engaged in a number and variety of activities and programs which are economic, political, professional, scientific and religious in nature of which Plaintiffs do not approve, and in which they will have no voice, and which are not and will not be collective bargaining activities, i.e., the negotiation and administration of contracts with Defendant Board, and that a substantial part of the sums required to be paid under said Agency Shop Clause are used and will continue to be used for the support of such activities and programs, and not solely for the purpose of such activities and programs, and not solely for the purpose of defraying the cost of Defendant Federation of its activities as bargaining agent for teachers employed by Defendant Board.

D. Said Agency Shop Clause is contrary to the provisions of the Public Employment Relations Act, Act 336, Public Acts of Michigan of 1947, as amended, including in particular, Section 10(c) thereof, which forbids discrimination in regard to hire, or terms and conditions in order to encourage membership in a labor organization.

E. Said Agency Shop Clause is also contrary to (1) The Michigan Teacher Tenure Act, Act No. 4, Public Acts of Michigan of 1937 (Ex. Sess.), as amended; (2) Section 353, Chapter LI, Penal Code of Michigan, M.S.A. 28.585; and (3) the Michigan General School Laws.

3. That the Court grant to Plaintiffs and members of the class represented by Plaintiffs such further and other relief as may be necessary, or may to the Court seem just and equitable, in the premises.

Respectfully submitted,
KELLER, THOMA, MC MANUS
& KELLER

BY /s/ Leonard A. Keller

Leonard A. Keller
Attorneys for Plaintiffs
2366 Penobscot Building
Detroit, Michigan 48226
313-965-7610

DATED: Detroit, Michigan
January 16, 1970

Warczak Motion by Detroit Federation of Teachers for Summary Judgment
[Filed November 12, 1969]

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

[Title omitted in printing.]

MOTION BY DETROIT FEDERATION OF TEACHERS, ET AL. FOR SUMMARY JUDGMENT

Now come defendants, Detroit Federation of Teachers, Mary Ellen Riordan, John Elliott, Marilyn Klein, and Edward Vanderlaan, by their attorneys, Rothe, Marston, Mazey, Sachs & O'Connell, and move for summary judgment in their behalf for the following reasons and grounds:

Plaintiffs have failed to state a claim upon which relief can be granted.

WHEREFORE, said defendants pray that summary judgment be entered in their behalf.

ROTHE, MARSTON, MAZEY, SACHS & O'CONNELL
by /s/ Theodore Sachs
Theodore Sachs
Attorneys for defendants DFT et al.
1000 E. Farmer
Detroit, Michigan 48226
965-3464

DATED: November 12, 1969

Warczak Answer and Motion for Summary Judgment
[Filed December 23, 1969]

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

[Title omitted in printing.]

ANSWER AND MOTION FOR SUMMARY JUDGMENT

Now comes THE BOARD OF EDUCATION OF THE SCHOOL DISTRICT OF THE CITY OF DETROIT, a statutory body corporate, (hereinafter called "Defendant") one of the defendants in the above-entitled cause, by its attorneys, Miller, Canfield, Paddock and Stone, and makes answer to the complaint of CHRISTINE WARCZAK, ERNEST C. SMITH, JUDITH KENNEDY, AGNES STILLWELL, et al by saying:

1. Not having sufficient information upon which to form a belief, Defendant neither admits nor denies the allegations contained in paragraph 1 of plaintiffs' complaint, but leaves plaintiffs to their proofs.

2. Defendant admits the allegations of paragraph 2 of plaintiffs' complaint.

3. Defendant admits the allegations of paragraph 3 of plaintiffs' complaint.

4. Defendant admits the allegations of paragraph 4 of plaintiffs' complaint.

5. Defendant admits the allegations of paragraph 6 of plaintiffs' complaint.

6. Defendant admits the allegations of paragraph 6 of plaintiffs' complaint.

7. Defendant admits the allegations of paragraph 7 of plaintiffs' complaint.

8. Not having sufficient information upon which to form a belief, defendant neither admits nor denies the allegations contained in paragraph 8 of plaintiffs' complaint, but leaves plaintiffs to their proofs.

9. Defendant admits the allegations of paragraph 9 of plaintiffs' complaint.

10. In answer to the allegations of paragraph 10 of the plaintiffs' complaint, defendant asserts that it is the intention of the Board of Education of the School District of the City of Detroit to comply with all provisions of its collective bargaining agreement with the Detroit Federation of Teachers, including the clause referred to. As to any other allegations of said paragraph 10, the collective bargaining contract speaks for itself.

11. Not having sufficient information upon which to form a belief, defendant neither admits nor denies the allegations contained in paragraph 11 of plaintiff's complaint, but leaves plaintiffs to their proofs.

12. Defendant denies the allegations of paragraph 12 and avers and alleges that the allegations of said paragraph 12 are allegations of law and not of fact.

WHEREFORE, defendant prays that this Honorable Court enter its judgment of no cause for action in favor of defendant The Board of Education of the School

District of the City of Detroit, a school district of the first class, and against plaintiffs.

Miller, Canfield, Paddock and Stone
By /s/ George E. Bushnell, Jr.
George E. Bushnell, Jr.

And /s/ Carl H. von Ende
Carl H. von Ende

Attorneys for Defendant The Board of Education of the School District of the City of Detroit
2500 Detroit Bank & Trust Building
Detroit, Michigan 48226
963-6420

Dated: December 23, 1969

MOTION FOR SUMMARY JUDGMENT

Now Comes THE BOARD OF EDUCATION OF THE SCHOOL DISTRICT OF THE CITY OF DETROIT, a school district of the first class, defendant

herein, and respectfully moves this Honorable Court, under the provisions of Rule 117, Michigan General Court Rules, for summary judgment in its favor on the grounds that the plaintiffs have failed to state a claim upon which relief can be granted.

Miller, Canfield, Paddock and Stone
By /s/ George E. Bushnell, Jr.
George E. Bushnell, Jr.

And /s/ Carl H. von Ende
Carl H. von Ende

Attorneys for Defendant The Board of Education of the School District of the City of Detroit
2500 Detroit Bank & Trust Building
Detroit, Michigan 48226
963-6420

Dated: December 23, 1969

Warczak Plaintiffs' Offer of Proof
[Filed January 12, 1970]

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

[Title omitted in printing.]

PLAINTIFFS' OFFER OF PROOF

Plaintiffs offer to show on the trial of this cause by competent witnesses, testifying on the basis of personal knowledge and/or qualified expert opinion, and through the testimony of officers and representatives of Defendant Federation and its affiliated organizations, and the books, documents and records of such organizations that:

A. Collective bargaining in public employment in Michigan has disadvantages which outweigh its advantages to individuals embraced within the bargaining unit, and to the public at large, particularly with reference to teachers and to plaintiffs, and that the advantages of collective bargaining do not, in any case, justify the deprivation of the constitutional rights of individuals.

Plaintiffs will show that among such disadvantages are the following:

1. Strikes called, sponsored and encouraged in violation of law.

2. Deprivation of individual choice in relation to many job prerequisites and privileges.

3. Loss of earnings on a long-term basis.

4. Damage suffered by individuals by reason of intra-union rivalries and inefficiency and corruption within unions.

B. Defendant Federation is affiliated with the Michigan Federation of Teachers, a labor organization having as its members teachers throughout the State of Michigan, and with the American Federation of Teachers, a labor organization having as its members teachers throughout the United States, and other labor organizations. Said labor organizations, including Defendant Federation, are engaged, plaintiffs are informed and therefore aver, in a number and variety of activities and programs which are economic, political, professional, scientific and religious in nature of which plaintiffs do not approve, and in which they will have no voice, and that a substantial part of the sums required to be paid under said agency shop clause are used and will continue to be used for the support of such activities and programs, and not solely for the purpose of defraying the cost of Defendant Federation of its activities as bargaining agent for teachers employed by Defendant Board.

C. Defendant Federation, under its constitution and by-laws and its policies and practices, discriminates in favor of members and to the disadvantage of non-members, with a view to inducing and encouraging membership in the Federation in the following respects:

1. Only members are allowed to attend and vote at business meetings, including meetings for the ratification of collective bargaining contracts, of the Federation. The privilege of voting and/or holding elective office in the Federation is extended only to members in good standing. In short, non-members

have no voice of any kind in the affairs of the Federation.

2. The Federation carries on various social activities for the benefit of its members which are not available to non-members as a matter of right.

Dated: January 12, 1970.

Respectfully submitted,

KELLER, THOMA, McMANUS & KELLER

By /s/ Leonard A. Keller

Leonard A. Keller
Attorneys for Plaintiffs
2366 Penobscot Building
Detroit, Michigan 48226
Telephone: 965-7610

Warczak Affidavit of Charles A. Benson
[Filed January 12, 1970]

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE
COUNTY OF WAYNE

[Title omitted in printing.]

AFFIDAVIT

STATE OF MICHIGAN)
COUNTY OF WAYNE)

CHARLES A. BENSON, being duly sworn, depose and say that I am one of the Plaintiffs in the above-entitled cause and make this Affidavit for the purpose of preventing the entry of a summary judgment against me in said cause; that all facts set forth herein are within my personal knowledge; that I am not disqualified from being a witness, and that if sworn as a witness I can testify competently to the facts hereinafter set forth.

I am opposed to the clause entitled "Union Membership, Agency Shop and Dues Deduction" presently contained in the collective bargaining agreement between the Detroit Board of Education and the Detroit Federation of Teachers, and I am unwilling to comply therewith. If I am compelled to pay agency shop service fees to the Detroit Federation of Teachers, I feel that I will be deprived thereby of my constitutional rights in that:

1. The Detroit Federation of Teachers is affiliated with other labor organizations, including the Michigan

Federation of Teachers and the American Federation of Teachers. It is also affiliated with other labor unions having nothing to do with the profession of teaching, through its membership in the AFL-CIO, and the other unions which are members of that association.

2. Directly, and through its affiliated organizations named above, a substantial portion of the revenues of the Detroit Federation of Teachers is devoted to political and social purposes of which I do not necessarily approve. I am unwilling to pay agency shop dues to support such activities and purposes over which I will have no control. Some of such activities which have come to my attention, either by word of mouth from other teachers, or from the publications of the Detroit Federation of Teachers, are as follows:

A. Support of political candidates for public office, including those which are partisan in nature, such as state offices and the U.S. Congress, and others which are non-partisan in nature, such as offices in the city of Detroit, membership on the Detroit Board of Education, and judicial offices. In some cases, this has meant that the Federation has supported candidates selected and recommended by outside political agencies, such as the Committee on Political Education (COPE), which is the political arm of the AFL-CIO.

B. In addition to supporting candidates for various political offices, the Federation uses its funds to promote legislation, both on the state level, through the Michigan Federation of Teachers, which has an office in Lansing, and on the national level through the American Federation of Teachers, which has its office in Washington, D.C. In both cases, I am informed, they take positions and lobby with respect

to legislation favored by the unions. Also, on the purely local level, the Detroit Federation of Teachers supports measures to be adopted by the Detroit Board of Education on issues of public and social importance. For example, the Federation supported the so-called "moratorium day" which was a nationwide protest against the war in Vietnam. It has also taken positions with respect to such issues as aid to parochial schools, re-structuring of the Detroit city school system, and related issues.

As a teacher who is not a member of the Detroit Federation of Teachers, I am opposed to the use of union funds for these political and social purposes. It is my position that any funds collected from teachers by a union should be expended for only one purpose, namely, collective bargaining on behalf of the teachers in the system. This means to me that the Federation should devote all of its funds to the improvement of teachers' salaries and working conditions in Detroit.

3. Further, I disagree with the Federation when it (and the Board of Education) insists that all teachers, even non-members, should share the cost of collective bargaining, not because I think collective bargaining is wholly disadvantageous, but because I believe that it should be left to the individual to decide whether or not he desires to support an organization which bargains on his behalf. Specifically, while collective bargaining may be of advantage to teachers in Detroit in certain economic aspects, such as salaries, it is also, in part, detrimental to the interests of the profession as a whole and to individual teachers in other aspects.

A. I do not believe that teachers should strike in violation of law. Yet the Detroit Federation of Teachers has struck in the past and doubtless will

threaten to strike in the future. It is the official policy of the American Federation of Teachers to endorse teachers' strikes and to work for the removal of legislation prohibiting strikes. Strikes by teachers are on the increase. I think this is detrimental to the teaching profession, and will in time also impose an economic hardship on many teachers who are forced to remain out of work during a strike, against their will. In addition, teachers' strikes, as endorsed by the Federation, are highly detrimental to education, the community as a whole, and the children in the public schools.

B. I also believe that collective bargaining has numerous disadvantages for individual teachers. In many instances, the senority principle, rather than individual merit, will control assignments, placements, promotions in some instances, and other rewards for professional skill and competence. Individuals are not able to make personal decisions and agreements with principals and other administrators which they deem beneficial to themselves or the best interests of the profession and to students.

C. I am opposed to compulsory payment of service fees because of the internal political rivalries which are common in unions and exist in the Federation.

4. Lastly, I oppose the compulsory payment of service fees to the Federation because, under its constitution and by-laws and its policies and practices, the Federation discriminates in favor of members and to the disadvantage of non-members, with a view to inducing and encouraging membership in the Federation in the following respects:

A. Only members are allowed to attend and vote at business meetings, including meetings for the ratification of collective bargaining contracts, of the Federation. The privilege of voting and/or holding elective office in the Federation is extended only to members in good standing. In short, non-members have no voice of any kind in the affairs of the Federation.

B. The Federation carries on various social activities for the benefit of its members which are not available to non-members as a matter of right.

Attached to this Affidavit are copies of various publications issued or published by the Federation, including articles from The Detroit Teacher, the official publication of the Federation, all of which are in the possession of defendants.

/s/ Charles A. Benson

[Jurat omitted in printing.]

[Attachments omitted in printing.]

***Warczak* Opinion of Wayne County Circuit Court**
[Filed January 19, 1970]

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

CHRISTINE WARCZAK, ERNEST C. SMITH, JUDITH KENNEDY, AGNES STILLWELL, et al.,

Plaintiffs,

vs.

Civil Action No. 145080

THE BOARD OF EDUCATION OF THE SCHOOL DISTRICT OF THE CITY OF DETROIT, a statutory body corporate; DETROIT FEDERATION OF TEACHERS; MARY ELLEN RIORDAN; JOHN ELLIOTT; et al.,

Defendants.

OPINION

This matter comes before this Court on defendants' (Detroit Federation of Teachers and Detroit Board of Education) Motion for Summary Judgment under Michigan General Court Rule 117, predicated on the claim that plaintiffs have failed to state a cause of action. Specifically the plaintiffs claim that they are entitled to declaratory relief to determine the validity of the agency shop clause in the collective bargaining agreement between the defendant Detroit Board of Education and defendant Detroit Federation of Teachers.

Plaintiffs filed this suit as a class action on behalf of themselves and others in a similar situation who are also school teachers who object to the requirement that they authorize deduction of service fees equal to the regular union dues or be terminated from employment. It appears that defendant Detroit Federation of Teachers have been certified as the exclusive bargaining representative of all teachers in the Detroit School System by virtue of the application of the procedures set forth in the Public Employment Relations Act.

The complaint filed by plaintiffs contends that the agency shop clause as it appears in the collective bargaining agreement is invalid as to these plaintiffs and all others in the same class for the following reasons:

1. This provision violates the constitutional guarantees of freedom of association and right to privacy.
2. It denies plaintiffs due process and equal protection as required by both State and Federal Constitutions.
3. Use of collected monies for purposes other than that germane to the contract itself is illegal as to them.
4. The clause is contrary to state statutes; namely, the Public Employment Relations Act, Michigan Teachers Tenure Act, Section 353, Chapter LI, Penal Code (MSA 28.585), and the Michigan General School Laws.

In regard to the question of freedom of association and right to privacy, it should be noted that the provision for an agency shop does not require plaintiffs or any of them to become members or join the defendant union. It does require that all persons

covered by the contract contribute an equal sum to the union designated as the bargaining agent for all the employees.

Plaintiffs contend that the provision in the collective bargaining agreement deprives them of certain guarantees under the due process clause. Nowhere can this Court find any arbitrary or discriminatory provisions in the principle of the agency shop clause. No employee will be prejudiced in or be deprived of his employment without the safeguards of due process. The contract itself provides for the following of the dismissal procedure of the Michigan Tenure Act which requires notices, hearing, representation, confrontation and a written record. On the issue as to whether the plaintiffs are being denied equal protection as guaranteed by the constitution, it does not appear that any employee in the bargaining unit is being in any manner discriminated against whether or not he is a union member. Each employee has all the rights and privileges of a member and all the protections and benefits guaranteed to members. He pays no more (or less) than a member for the services rendered to him.

Plaintiffs' contention that the use of the monies collected for purposes other than that germane to the bargaining and administration of the contract would be illegal as to them is a somewhat novel issue. It does not appear to have had much consideration by courts. One case touching upon it is *I.A.M. v. Street*, 367 U.S. 740, where, as a matter of statutory construction, the court held that the monies could not be used for certain purposes, but even in this case the Supreme Court held an injunction to restrain the collection was not to be permitted. To the same effect is the case of *Railroad*

Clerks v. Allen, 373 U.S. 113, wherein the case was returned to the trial court to determine the proportion of the dues used for improper purposes.

In the instant proceeding it does not appear that this is really an issue at this juncture. The matter before this Court is for declaratory relief from the enforcement of the particular clause. No money has been used for any purposes as yet, the authority appears to be that a restraining of the collection is not the proper remedy and in this context there may be an issue to be resolved in a proper proceeding as to what expenditure of the funds is proper. Perhaps in a suitable proceeding it may be decided that any expenditure in furtherance of legitimate union purposes may be permissible.

Finally, it is necessary to determine whether the agency shop clause in the agreement is contrary to or prohibited by any state statute. First, plaintiffs call this Court's attention to the Michigan Tenure Act which provides for discharge or demotion of a tenure teacher only for reasonable and just cause. Can this be reconciled with the agency shop clause which requires the dismissal of a teacher for failure to pay the service fee equivalent to the regular union dues? A reading of the contract will reveal that the constitutional safeguards of procedural due process as required by the Michigan Tenure Act be followed. If not against public policy and repugnant to any basic rights of individuals, it is most conceivable that this violation of the collective bargaining contract may justify discharge. The cases are myriad in holding that where the agency shop clause is violated an employee's discharge for violation of the clause was reasonable.

Secondly, plaintiffs call this Court's attention to the P.E.R.A. itself and contend that the agency shop clause is prohibited in that is is not specifically authorized. A comparison of P.E.R.A. with M.L.M.A. indicates that M.L.M.A. specifically authorizes it, P.E.R.A. is silent and therefore plaintiffs would contend that it is an indication that the legislature intended to provide for no form of union security in public employment contracts. This Court would conclude the contrary. P.E.R.A. authorizes contracts between employees and their public employers to cover conditions of employment. The agency shop is apparently a condition of employment agreed upon by the contracting parties and where not violative of any individual rights will be sustained. As to the issue whether this clause encourages or discourages membership in a union, this Court would conclude that the clause does not violate this provision of P.E.R.A. Nothing encompassed in the agency shop clause encourages anyone to do any more than contribute to the organization selected by a majority of the group to represent it. This contribution merely spreads among all the beneficiaries the cost of rerpesentation.

Third, plaintiffs contend that the provision here in question is violative of Section 353, Chapter LI, of the Michigan Penal Code, being MSA 28.585. This statute appears to this Court to be directed against unilateral acts by employers to relieve employees from arbitrary or capricious demands on the part of the employer. The agency shop clause in a collective bargaining agreement is not such a provision as would come within the purview of the criminal statute.

Fourth, the issue is raised whether this provision is contrary to or prohibited by the Michigan General School Laws. True it is that school boards derive their powers from the school laws and such other laws as may be applicable. It is urged that since the School Code does not authorize an agency shop agreement, the Board has ho power to enter into one. This Court would hold that these statutes must be read in conjunction with P.E.R.A. Whether P.E.R.A. would invalidate such a provision has been dealt with supra. On this issue it would be indeed a narrow construction of the school laws to hold that nothing not specifically authorized therein is prohibited. Such a holding would be contrary to *Holland School District v. Holland Education Association*, 380 Mich. 314, and *Garden City School District Labor Mediation Board*, 358 Mich. 258.

From the foregoing it is patent that this Court would conclude that the agency shop provision is not repugnant to any statute or constitutional provision. Therefore, a Summary Judgment as prayed for by defendants will be granted. An appropriate Judgment in accordance with this Opinion may be presented.

/s/ Charles Kaufman
Circuit Judge

Dated: January 19, 1970
Detroit, Michigan

A TRUE COPY
EDGAR M. BRANIGIN
CLERK
BY /s/
Deputy Clerk

***Warczak* Summary Judgment for Defendants**
[Filed January 23, 1970]

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

CHRISTINE WARCZAK, et al.,
Plaintiffs,

-vs-

DETROIT BOARD OF EDUCATION, DETROIT FEDERATION OF TEACHERS, MARY ELLEN RIORDAN, JOHN ELLIOTT, MARILYN KLEIN, EDWARD VANDERLAAN, JOHN DOE and JANE DOE, as Teachers and Employees of Detroit Board of Education and Members of Detroit Federation of Teachers,
Defendants.

No. 145080

SUMMARY JUDGMENT FOR DEFENDANTS

At a session of said Court held in the City-County Building in the City of Detroit, Michigan on
JAN 23 1970

PRESENT: HONORABLE CHARLES KAUFMAN, CIRCUIT JUDGE.

This matter having come on to be heard upon the motion of defendants for summary judgment in their behalf pursuant to GCR 1963, 117.2(1), for the reason that plaintiffs Christine Warczak, Ernest C. Smith, Judith Kennedy, Bessie Petrone, LeRoy Rowley, Gerald

Golden, Yolanda Bone, Christine Nelson, Douglas L. Roeseler, Diana M. Klawitter, Brenda C. Jett, Richard R. Quick, James E. Davis, Leola R. Carter, Ethel B. Beckwith, Richard J. Hendin, Arthur Schneider, El Vera Gustafson, Harold C. Cook, Joseph A. Poniatowski, Donald Ashby, Charles A. Benson, Edward Anthony, Lillian Smith, Sara J. Cameron, Katherine A. Morrissey, Noreene Leavell, Charles Kane, Margaret Quinn, Cataldo Casiecci, James L. Brennan, Marjorie N. Boone, Marjorie H. Harrison, Sally K. Harrison, Cora McMillan, Dennis G. Kelly, and George W. Carter have failed to state a claim upon which relief can be granted, and defendant Detroit Federation of Teachers and individual defendants, by their counsel, and parties plaintiff and added parties plaintiff, by their counsel, having filed briefs in opposition thereto, and all counsel including counsel for defendant Detroit Board of Education, having presented oral argument thereon; and the Court being fully advised in the premises; now, therefore, for the reasons more particularly set forth in the Opinion of the Court dated January 19, 1970, on motion of counsel for defendants;

IT IS ORDERED AND ADJUDGED, that plaintiffs by their complaint and amended complaint have failed to state a claim upon which relief can be granted; and

IT IS FURTHER ORDERED AND ADJUDGED that the agency shop clause in the current collective bargaining agreement between the defendant Detroit Board of Education and defendant Detroit Federation of Teachers is valid and of full force and effect according to its terms; and

IT IS FURTHER ORDERED AND ADJUDGED that the said agency shop clause does not contravene the

Constitution of the United States or of the State of Michigan or the statutes of the State of Michigan, including the Public Employment Relations Act, the Michigan Teachers Tenure Act, Section 353, Chapter LI, Penal Code (M.S.A. §28.585), and the Michigan school laws.

By consent of defendants, no costs are taxed, a public question being involved.

/s/ CHARLES KAUFMAN

CIRCUIT JUDGE

A TRUE COPY
EDGAR M. BRANIGAN
CLERK
BY /s/ _____
Deputy Clerk

Warczak Order Sustaining Objections of Defendant Detroit Federation of Teachers to Interrogatories to Defendant
[Filed January 23, 1970]

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

[Title omitted in printing.]

ORDER SUSTAINING OBJECTIONS BY DEFENDANT DETROIT FEDERATION OF TEACHERS TO INTERROGATORIES TO DEFENDANT

At a session of said Court held
in the City-County Building in the
City of Detroit, Michigan on
JAN 23 1970

PRESENT: HONORABLE CHARLES KAUFMAN, CIRCUIT JUDGE.

This matter having come on to be heard on the objections by Detroit Federation of Teachers to Interrogatories to Defendant theretofore filed by added parties plaintiff; and defendant Detroit Federation of Teachers, by its counsel, having been heard in support of said objections, and the plaintiffs and added plaintiffs, by their attorneys, having been heard in opposition thereto; and the Court being fully advised in the premises; now, therefore, on motion of Rothe, Marston, Mazey, Sachs & O'Connell,

IT IS ORDERED that said objections to interrogatories be and the same are hereby sustained, for the reason that said interrogatories are not relevant to the matters in issue and before the Court, under the defendants' motion for summary judgment for failure of plaintiffs to state a claim upon which relief can be founded, and under the complaint and amended complaint for declaratory relief.

/s/ CHARLES KAUFMAN
CIRCUIT JUDGE

[Clerk's certificate omitted in printing.]

Abood Complaint
[Filed April 23, 1970]

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

D. Louis Abood, Mary Aceti, Joyce C. Alexander, Mary. E. Allen, Roy A. Allen, Jr., Mrs. Aurelia Amnatte, Theodore J. Anchell, Martin Astourian, Fred Atiyeh, Sylvia Baia, Irene Balas, Antoinette Balazy, Walter Banks, Florence Barham, Nina Berry, Harry Beusterien, Marion Bezou, Francis Bickel, Toby Bistrow, Frances Blomfield, Carl Blumfield, Kathleen Boeltcher, Peter Bogart, Ruby Branch, Velma Brewer, Bertha Brotman, Mary Buelick, Beatrice Burlage, Anna Burnett, Matthew Burrer, Chester Bustraan, Albert Butler, Mary Butler, John Butterfield, Paul Bergman, Fred Bies, Wesley Carlos, Nicholas Canton, Ward Carlson, Marcia Carpenter, Julia Carr, Dorothy Chimney, Truman Cleveland, Eleanor Coate, Charlotte Cody, Marcile Cohen, Robert Cohen, Vivian Collins, Grace Colter, Levy Conerway, Minnie Conley, Michelle Cook, Helen Corders, Frederic Cosgro, Jr., Lois Creed, Earl Croll, Larry Crosby, Margaret Cully, Pauline Curtis, Emil Dalak, Pamela Darust, Lucille Davenport, Estelle Davidson, Morlean Daye, Ernest Deason, Mary Deason, Henry Dees, Euphrasia DeRonne, R. Allegra Desser, Arthur Devers, Susan Dickow, Daniel Dobbins, John Donaldson,

Helen Douglass, Edward Drew, Elaine)
Easton, Diego Enciso, Helen Enlow,)
Richard Eshkanian, Cora Eubanks, Linda)
Engenio, James Evans, Marguerite Faber,)
Frances Fahrenbacher, Vernon Fahren-)
krug, James Faust, Helen Fenton, Cinna)
Ferguson, Max Fertel, Barbara Foreman,)
Gloria Fort, Melvin France, Janet)
Franczek, Gerald Frasier, Harriette Frayer,)
Karen Friess, Felix Galasso, Edna)
Gamrath, Nina Gates, Joseph Giglio,)
Robert Gialloreto, Michael Gilin, Elaine)
Gilman, Richard Gold, Rita Gold, Elaine)
Goodman, Terese Gostomski, Patricia)
Grant, Howard Green, Leslie Greenwald,)
Peggy Grimshaw, Ernest Grinine, Angelo)
Gust, S. Gerald Gorcyca, Margaret Grossa,)
C. Halliday, Chloris Harmsen, Fred Harris,)
Albert Hart, Lawrence Harwin, William)
Hass, Mary Hassett, Bettye Hayden,)
Josephine Hayden, Eunice Hayes, Kenneth)
Hency, Elizabeth Hennes, Marsha Hewitt,)
Edith Hicks, Jacquelyn Hilisman, Howard)
Hiss, C. Holliday, Harris Hool, Jeffernell)
Howcott, S. Howell, Frank Huxley,)
Louise Irwin, Steve Jackson, Mary James,)
Roger Jamison, Anna Jefferson, Charles)
Jenks, Diane Johnson, Jurate Joksa, James)
Jones, Nancy Kaufman, Shirley Kehn,)
Harry Keller, Darrell Kincade, Fred)
Knack, John Knox, Ann Kohut, Myrra)
Koppin, Edward Kroll, Kathleen)
Krumpoch, Mary Kulis, Edward Kupsoff,)
Arthur Kuzniar, Elizabeth Larkins, Jewerl)
Laurence, Helene Lawler, Verda Lawler,)
Virginia Leonard, Norma Littlejohn, Vir-)
ginia Lloyd, Letitia Loosli, Dorothy)
Lochbihler, Letitia Loosli, Henry Luns-)
ford, Ralph MacPherson, X. Maguire,)

Ruth Martin, Goldie Martinez, Eugenie)
Maxwell, Mary McCarthy, Violet)
McCreery, Gary McGaffey, Mildred)
McGill, Jack McGrath, Preston McKee,)
Rebecca McNamee, Gertrude Mentli-)
kowski, Mrs. Victor Merdler, John Miller,)
Lila Miller, Roy Morgan, Leah Moir,)
Curtis Moore, Maurice Morger, V.)
Muszczynska, Augie Myers, Orion)
Nazzaro, Judith Nearhood, Elizabeth)
Neeb, Jo Ann Neff, James Newby, David)
Newman, Pauline Nicholson, Morris)
Norkin, Gloria Nycek, Joyce O'Brien,)
William O'Brien, Jr., Joseph Olson, Philip)
Owen, Robert Owens, Mark Palombo,)
Elaine Palombo, Elizabeth Pattison,)
Beatrice Paul, Edwena Payne, Emma)
Pearson, Barbara Pedersen, John Perry,)
Lynne Pfannef, James Polk, Norma)
Potter, Joseph Powers, Thomas Powers,)
Lorene Quinlan, Dorothy Reardon, Nancy)
Reckinger, Dorothy Reece, Charles Reed,)
Donald Reegle, Margaret Reesedge, June)
Richard, Roosevelt Richards, P. Ritchie,)
Pearl Roberson, Margaret Robertson,)
Robert Roehl, Alvin Rolle, Mary Ross,)
Andrew Roth, Harry Russell, Otto)
Salchow, Donette Sayles, Eleanor)
Schaedel, Edna Schiller, Rolyn Schindler,)
Norville Schock, Robert Schwartz,)
Angelica Semenjuk, Mae Sepp, Leslie)
Seppala, Beth Shafe, Fred Shafe, James)
Sharpe, Johnny Shepard, Charles Shires,)
Gus Shuras, Arthur Siegel, Ralph Sigel,)
Monica Sims, Edward Silberstein, Ruth)
Sinnhuber, Irene Sipe, Joan Slowik,)
Arnold Smith, Allen Smith, Beatrice)
Smith, Donald Smith, Frank C. Smith,)

Frank R. Smith, Mary Smith, Olga Smith, Stanley Stankovich, Michael Stanton, Florence Starr, Phyllis Stengel, Justine Stevens, Roy Stevens, Letha Steward, Richard Stocker, Herman Strate, Willie Straughter, Russell Swartz, Robert Swearingen, Hedwig Taylor, Patricia Taylor, Elaine Teague, Wilfred Thierry, Winnie Thierry, W. Thompson, Carroll Thurston, Shirley Tillman, Pauline Tomke, Neil Troutman, William Van Fleet, Mae Veldhuis, Lillian Verreau, Constance Vinson, Wilbur Walters, George Wartian, Diane Weinstein, Blanche Weiss, Edwina Weiss, Donald Westlake, Ucola White, Barbara Williams, Joan Wills, Edward Wirth, Harriet Wojtowicz, Myrna Workman, James Wright, Beverly Wydra, Lois Yates, Sarah Young, M. Lee Youngs, Helen Zavis,

Plaintiffs,

vs.

Detroit Board of Education, Detroit Federation of Teachers, Mary Ellen Riordan, John Elliott, Marilyn Klein, Paul Richards,

Defendants.

Case No. 155255

COMPLAINT

NOW COMES Plaintiffs, by and through their attorneys, Keller, Thoma, Mc Manus & Keller and say as follows:

COUNT I

1. Plaintiffs are employed as teachers by Defendant, Detroit Board of Education. Several of the Plaintiffs are probationary teachers, and the remaining Plaintiffs have continuing tenure under the Michigan Teacher Tenure Act, Act No. 4, P.A. 1937 (Ex. Sess.) as amended.

2. Defendant Detroit Board of Education (hereinafter referred to as the "Board") is a body corporate operating the schools situated in the City of Detroit, Wayne County, Michigan, as a school district under the general school laws of the State of Michigan. It has its office and principal place of buisness in the City of Detroit, Wayne County, Michigan.

3. Defendant Detroit Federation of Teachers (hereinafter referred to as the "Federation") is a labor organization having as its membership teachers empoyed by Defendant Board. It has its offices in the City of Detroit, Wayne County, Michigan.

4. Defendant Mary Ellen Riordan is a teacher and Employee of Defendant Detroit Board of Education and President of Defendant Detroit Federation of Teachers.

5. Defendant John Elliott is a teacher and Employee of Defendant Detroit Board of Education and first Vice President of Defendant Detroit Federation of Teachers.

6. Defendant Marilyn S. Klein is a teacher and Employee of Defendant Board of Education and Secretary of Defendant Detroit Federation of Teachers.

7. Defendant Paul Richards is a teacher and Employee of Defendant Detroit Board of Education and Treasurer of Defendant Detroit Federation of Teachers.

8. Effective July 1, 1969, and for the period ending July 1, 1971, Defendant Board and Defendant

Federation entered into a collective bargaining agreement, embracing the salaries, hours, and other terms and conditions of employment of said teachers, including Plaintiffs, which provides, among other things, in a clause entitled "Union Membership, Agency Shop, and Dues Deduction", hereafter referred to as the "Agency Shop Clause", as follows:

A. All employees, employed in the bargaining unit, or who become employees in the bargaining unit, who are not already members of the Union, shall, within sixty (60) days of the effective date of this provision or within sixty (60) days of the date of hire by the Board, whichever is later, become members, or in the alternative, shall, within sixty (60) days of the effective date of this provision or within sixty (60) days of their date of hire by the Board, whichever is later, as a condition of employment, pay to the Union each month a service fee in an amount equal to the regular monthly Union membership dues uniformly required of employees of the Board who are members. This provision is effective Monday, January 26, 1970.

B. The Board, upon receiving a signed statement from the Union indicating that the employee has failed to comply with this condition, shall immediately notify said employee that his services shall be discontinued at the end of the current semester, and shall dismiss said employee accordingly. The Board shall follow the dismissal procedure of the Michigan Tenure Act as applicable. The refusal of a teacher to contribute fairly to the costs of negotiation and administration of this and subsequent agreements is recognized as just and reasonable cause for termination of employment under the Michigan Tenure Act. However if at the end of the

semester, a teacher, or teachers, receiving the termination notice shall then be engaged in pursuing any legal remedies contesting the discharge under this provision before the Michigan Tenure Commission, or a court of competent jurisdiction, such teacher's service shall not be terminated until such time as such teacher or teachers have either obtained a final decision as to the validity or legality of such discharge, or such teacher or teachers have ceased to pursue the legal remedies available to them by not making a timely appeal of any decision rendered in said manner by the Tenure Commission, or a court of competent jurisdiction.

C. An employee who shall tender or authorize the deduction of membership dues (or service fees) uniformly required as a condition of acquiring or obtaining membership in the union, shall be deemed to meet the conditions of this Article so long as the employee is not more than sixty (60) days in arrears of payment of such dues (or fees).

D. The Board shall be notified, in writing, by the Union of any employee who is sixty (60) days in arrears in payment of membership dues (or fees).

E. If any provision of this Article is invalid under Federal or State law, said provision shall be modified to comply with the requirements of said Federal or State law.

F. The Union agrees that in the event of litigation against the Board, its agents or employees arising out of this provision, the Union will co-defend and indemnify and hold harmless the Board, its agents or employees for any monetary award arising out of such litigation.

G. Each employee in the bargaining unit shall execute an authorization for the deduction of Union dues or Agency Shop fees.

H. The Board shall deduct from the pay of each employee from whom it receives an authorization to do so the required amount for the payment of Union dues or Agency Shop fees. Such dues or fees, accompanied by a list of employees from whom they have been deducted and the amount deducted from each, and by a list of employees who had authorized such deductions and from whom no deductions was made and the reason therefor, shall be forwarded to the Union office no later than thirty (30) days after such deductions were made.

9. Plaintiffs have not become members of Defendant Detroit Federation of Teachers and have refused to authorize a dues deduction or pay said regular monthly union membership dues, or service fees equivalent thereto, to Defendant Federation.

10. On November 7, 1969, a class action suit (hereinafter "the class action suit") was instituted in Wayne County Circuit Court on behalf of Plaintiffs and other teachers similarly situated alleging the invalidity of the "Agency Shop" provision here before set forth, said suit being Civil Action Case No. 145080 and is now pending before the Michigan Court of Appeals, being Docket No. 8951.

11. On or about February 11, 1970, and again on or about March 25, 1970, Defendant Detroit Board of Education was notified that Plaintiffs are members of the above class action suit.

12. Notwithstanding the pendency of the above class action suit in the Michigan Court of Appeals, on April 3, 1970 Defendant Federation requested Defendant Detroit Board of Education to immediately notify Plaintiffs that their services were to be discontinued at

the end of the current semester and that the Board in fact discharge Plaintiffs.

13. Notwithstanding the notification identifying Plaintiffs as members of the class action suit and notwithstanding the pendency of said suit in the Michigan Court of Appeals, Defendant Detroit Board of Education on or about March 17, 1970 and again on April 8, 1970, in compliance with Defendant Federation's request, have threatened Plaintiffs with discharge.

14. Plaintiffs aver that because of Defendant Detroit Board of Education's repeated threats of discharge, they are fearful that they will in fact be discharged at the conclusion of the current school semester, ending July 1, 1970, in violation of the aforementioned "agency shop" provision prohibiting discharge if teachers are pursuing legal remedies contesting the validity of the agency shop clause.

15. Plaintiffs aver that unless Defendant Detroit Board of Education is restrained, it will carry out its threat and discharge the Plaintiffs in mass, resulting in immediate irreparable injury and loss not only to Plaintiffs but also to the families of Plaintiffs, the children attending public schools,in the City of Detroit, and the parents of said children.

WHEREFORE, Plaintiffs pray:

1. That this Honorable Court issue a temporary injunction against the Defendants, enjoining said Defendant from discharging Plaintiffs pursuant to the agency shop clause of the collective bargaining agreement pending final decision of the class action suit.

2. That the Court grant to Plaintiffs such further and other relief as may be necessary, or may to the Court seem just and equitable.

COUNT II

1. Plaintiffs incorporate by reference the allegations contained in Paragraph 1 through 9 of Count I, inclusive, as if said allegations were set forth herein, in their entirety.

2. Plaintiffs aver that it is the intention of Defendants to compel Plaintiffs to comply with the provisions of the so-called "agency shop clause", quoted above, namely, pay to Defendant Federation each month the regular monthly union membership dues or service fees equivalent thereto, and in default of payment thereof, to dismiss Plaintiffs from their employment.

3. Plaintiffs aver that Defendant Federation, under its constitution and by-laws and its policies and practices, discriminates in favor of members and to the disadvantage of non-members, with a view to inducing and encouraging membership in the Federation in the following respects:

A. Only members are allowed to attend and vote at business meetings, including meetings for the ratification of collective bargaining contracts, of the Federation. The privilege of voting and/or holding elective office in the Federation is extended only to members in good standing. In short, non-members have no voice of any kind in the affairs of the Federation.

B. The Federation carries on various social activities for the benefit of its members which are not available to non-members as a matter of right.

4. Plaintiffs aver that Defendant Federation is affiliated with the Michigan Federation of Teachers, a labor organization having as its members teachers

throughout the State of Michigan, and with the American Federation of Teachers, a labor organization having as its members teachers throughout the United States. Said labor organizations, including Defendant Federation, are engaged in a number and variety of activities and programs which are economic, political, professional, scientific and religious in nature of which Plaintiffs do not approve, and in which they will have no voice, and which are not and will not be collective bargaining activities, i.e., the negotiation and administration of contracts with Defendant Board, and that a substantial part of the sums required to be paid under said agency shop clause are used and will continue to be used for the support of such activities and programs, and not solely for the purpose of defraying the cost of Defendant Federation of its activities as bargaining agent for teachers employed by Defendant Board.

5. Plaintiffs aver that collective bargaining in public employment in Michigan has disadvantages which outweigh its advantages to individuals embraced within the bargaining unit, and to the public at large, particularly with reference to teachers and to Plaintiffs, among such disadvantages being the following:

A. Strikes called, sponsored and encouraged in violation of law.

B. Deprivation of individual choice in relation to many job prerequisites and privileges.

C. Loss of earnings on a long-term basis.

D. Damage suffered by individuals by reason of intra-union rivalries and inefficiency and corruption within unions.

6. Plaintiffs aver that said agency shop clause and requirements thereof are void and of no effect, and are

contrary to the provisions of the constitution of the United States and State of Michigan, *inter alia,* in that

A. The requirement of the payment by Plaintiffs of compulsory union membership dues or service fees deprives them of their right to freedom of association, freedom from association, freedom of thought, and their right to privacy contrary to the First, Third, Fourth, Fifth, Ninth, and Fourteenth Amendments and their penumbras, to the Constitution of the United States and Article I of the Constitution of the State of Michigan, 1963.

B. The requirement of the payment by Plaintiffs of compulsory union membership dues or service fees deprives them of their right to work and of their liberty and property without due process of law and denies to them the equal protection of the laws, contrary to the Fourteenth Amendment to the Constitution of the United States and Article I of the Constitution of the State of Michigan, 1963.

7. Plaintiffs aver that said agency shop clause and the requirements thereof are contrary to the provisions of Michigan statutes, including (1) the Public Employment Relations Act, Act 336, Public Acts of Michigan of 1947, as amended; (2) the Michigan Teacher Tenure Act, Act No. 4 P.A. of Michigan, 1937 (Ex. Sess.), as amended; (3) Section 353, Chapter LI, Penal Code of Michigan, M.S.A. 28.585; and (4) the Michigan General School Laws.

WHEREFORE, Plaintiffs pray:

1. That this Honorable Court issue a temporary injunction against the Defendants, enjoining said Defendants from discharging Plaintiffs pursuant to the agency shop clause of the collective bargaining agreement pending a final decision of this cause.

2. That upon final hearing in this cause, the Court issue a permanent injunction enjoining said Defendants from discharging Plaintiffs pursuant to the agency shop clause of the collective bargaining agreement.

3. That this Court grant to Plaintiffs such further and other relief as may be necessary, or may to the Court seem just and equitable.

COUNT III

1. Plaintiffs incorporate by reference each and every allegation contained in Count I, as if said allegations were set forth herein, in their entirety.

WHEREFORE, Plaintiffs pray:

1. That this Honorable Court grant to Plaintiffs and against Defendants a declaratory judgment declaring that each of Plaintiffs is a member of the class of Plaintiffs in the class action suit and is thereby engaged in pursuing a legal remedy contesting a discharge under and as provided by Paragraph B of the agency shop clause.

2. That none of the Plaintiffs herein may be discharged by Defendant Board of Education under Paragraph B of the agency shop clause until after a final and unappealable disposition has been made of the class action suit.

COUNT IV

1. Plaintiffs incorporate by reference each and every allegation contained in Count II, as if said allegations were set forth herein, in their entirety.

WHEREFORE, Plaintiffs pray:

1. That this Honorable Court grant to Plaintiffs and against Defendants a declaratory judgment declaring that

A. Defendants may not discharge Plaintiffs under Paragraph B of the agency shop clause.

B. Defendants *may not* as a condition to the tenure and continued employment of Defendant Board of Education, require that Plaintiffs pay dues or a service fee to Defendant Federation.

Respectfully submitted,

KELLER, THOMA, MC MANUS
& KELLER
BY /s/ Thomas H. Schwarze
Thomas H. Schwarze
Attorneys for Plaintiffs
2366 Penobscot Building
Detroit, Michigan 48226
313-965-7610

DATED: Detroit, Michigan
April 23, 1970

***Abood* Answer of Defendants**
[Filed May 20, 1970]

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE
COUNTY OF WAYNE

[Title omitted in printing.]

ANSWER OF DEFENDANTS

Now come Detroit Board of Education, Detroit Federation of Teachers, Mary Ellen Riordan, John Elliott, Marilyn Klein and Paul Richards, defendants herein, by their attorneys, Rothe, Marston, Mazey, Sachs & O'Connell, and in answer to plaintiffs' complaint, say:

COUNT I.

1. Answering paragraph 1, defendants admit the allegations therein, on information and belief, except that certain of said persons are not within the teachers' bargaining unit.

2. Answering paragraph 2, defendants admit the allegations therein.

3. Answering paragraph 3, defendants admit the allegations therein.

4. Answering paragraph 4, defendants admit the allegations therein.

5. Answering paragraph 5, the defendants admit the allegations therein.

6. Answering paragraph 6, defendants admit the allegations therein.

7. Answering paragraph 7, defendants admit the allegations therein.

8. Answering paragraph 8, defendants admit the same except that such clause, being Article I, Section C of the said agreement, is captioned "Union Membership, Dues or Agency Shop Service Fees" (not "Union Membership, Agency Shop, and Dues Deduction"), the paragraphs thereof are numbered 1-8, inclusive (not "A" through "H"), and the word "service" appears after "Agency Shop" in "G" [7] and "H" [8].

9. Answering paragraph 9, defendants neither admit nor deny the allegations therein, defendants not having, within the time required to prepare the instant answer, sufficient information on which to base a belief, and therefore leave plaintiffs to their proofs; except, however, that defendants assert that at least 101 persons listed as plaintiffs herein are members of the Defendant Federation, or are paying agency shop fees.

10. Answering paragraph 10, defendants admit the allegations therein, except they deny that same was a class action.

11. Answering paragraph 11, defendants deny the allegations therein in the form and manner pleaded, except that defendant Board, on or about the date stated, received notice of said claim, which was then and is now denied.

12. Answering paragraph 12, defendants deny said allegations, except defendants admit that defendant Federation sent defendant Board a list of those employees who had failed to comply with Article I, Section C of the Agreement, and requested dismissal of said persons, as required by said Article I, Section C; defendants neither admit nor deny that certain of the

plaintiffs may be upon said list, not having sufficient information on which to base a belief, and therefore leave plaintiffs to their proofs.

13. Answering paragraph 13, defendants deny the allegations therein in the form and manner pleaded, except that defendant Board on or about the date stated, in compliance with defendant Federation's request as stated in the foregoing paragraph, and in accordance with the parties' collective bargaining agreement, advised persons on said list, which may include certain of the plaintiffs, that they would be discharged under the appropriate section of the contract in the event of non-compliance therewith.

14. Answering paragraph 14, defendants deny the conclusion that defendant Board's apprehended action is improper.

15. Answering paragraph 15, defendants deny said allegations, the same being contrary to fact.

AFFIRMATIVE DEFENSES

1. Plaintiffs fail to state a claim upon which relief can be granted; and there is no genuine issue as to any material fact.

2. Plaintiffs fail to state a claim upon which relief can be granted; and there is no genuine issue as to any material fact. *Inter alia*, the Detroit Board of Education and the Detroit Federation of Teachers concur that plaintiffs did not comply with the agency shop and "legal remedies" provisions of the contract between the Detroit Board of Education and the Detroit Federation of Teachers.

3. Plaintiffs lack standing to enforce the collective bargaining agreement between the Detroit Board of Education and the Detroit Federation of Teachers.

4. Plaintiffs have failed to exhaust remedies under the contract between Detroit Board of Education and the Detroit Federation of Teachers.

5. Under plaintiffs' complaint, they are splitting a cause of action.

6. Under plaintiffs' complaint, the Court is without jurisdiction in the premises.

WHEREFORE, defendants pray for dismissal of said count, with costs to defendants.

COUNT II.

1. Defendants incorporate herein, by reference, their answer to paragraphs 1-9, inclusive, of Count I hereof.

2. Answering paragraph 2, defendants admit the allegations of said paragraph.

3. Answering paragraph 3, defendant Board neither admits nor denies the allegations therein, not having sufficient information on which to base a belief, and therefore leaves plaintiffs to their proofs. Defendant Federation denies said allegations, except only to admit that membership which is uniformly available without discrimination as to all employees of the defendant Board in the teachers' bargaining unit, including plaintiffs, is a condition of the rights and responsibilities of membership, including voting, office holding, liability for assessments, obligations of membership, etc.

4. Answering paragraph 4, defendant Board neither admits nor denies the allegations therein, not having

sufficient information on which to base a belief, and therefore, leaves plaintiffs to their proofs. Defendant Federation denies said allegations except that it admits that it is affiliated with the Michigan Federation of Teachers, a labor organization having as it members teachers throughout the State of Michigan, and with the American Federation of Teachers, a labor organization having as its members teachers throughout the United States. Defendant Federation denies that any part of the sums required to be paid under the agency shop clause are used or will be used, directly or indirectly, for any purpose not germane to its collective bargaining activities.

5. Answering paragraph 5, defendants deny the allegations therein, as contrary to fact and law.

6. Answering paragraph 6, defendants deny the allegations therein, as contrary to fact and law.

7. Answering paragraph 7, defendants deny the allegations therein, as contrary to fact and law.

AFFIRMATIVE DEFENSES

1. Plaintiffs fail to state a claim upon which relief can be granted.

2. Under plaintiffs' complaint, they are splitting a cause of action.

3. Under plaintiffs' complaint, the Court is without jurisdiction in the premises.

4. If plaintiffs are part of the alleged plaintiff class in Warczak et al. v. Detroit Board of Education et al., No. 145-080, then the Summary Judgment against plaintiffs therein is res judicata against the plaintiffs herein.

WHEREFORE, defendants pray for dismissal of said complaint, with costs to defendants.

COUNT III

1. Defendants incorporate by reference their answer and affirmative defenses contained in Count I hereof.

WHEREFORE, defendants pray for dismissal of said complaint, with costs to defendants.

COUNT IV.

1. Defendants incorporate by reference their answer and affirmative defenses contained in Count II hereof.

WHEREFORE, defendants pray for dismissal of said complaint with costs to defendants.

ROTHE, MARSTON, MAZEY,
SACHS & O'CONNELL

by /s/ Theodore Sachs
Theodore Sachs
Attorneys for defendants
1000 Farmer
Detroit, Michigan 48226
965-3464

DATED: May 18, 1970.

Warczak Order of Michigan Supreme Court Vacating Summary Judgment and Remanding
[Entered December 28, 1972]

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN, Held at the Supreme Court Room, in the City of Lansing, on the 28th day of December in the year of our Lord one thousand nine hundred and seventy-two.

Present the Honorable
THOMAS M. KAVANAGH,
Chief Justice,
EUGENE F. BLACK,
PAUL L. ADAMS,
THOMAS E. BRENNAN,
THOMAS G. KAVANAGH,
JOHN B. SWAINSON,
G. MENNEN WILLIAMS,
Associate Justices

WM 7-271

CHRISTINE WARCZAK, et al,
Plaintiffs-Appellants,
and

ROBERT J. JOHNSON, et al,
Intervening Plaintiffs-Appellants,

v 53141

DETROIT BOARD OF EDUCATION, DETROIT FEDERATION OF TEACHERS, et al,
Defendants-Appellees.

On order of the Court (Black, J., not participating), leave to appeal is GRANTED. Pursuant to the decision in *Smigel et al,* Plaintiffs-Appellees v *Southgate Community School District et al,* Defendants-Appellants, Docket No. 53008, the summary judgment for the defendants entered in Wayne county circuit

court on January 23, 1970, on order of Honorable Charles Kaufman is hereby vacated and set aside and the cause is remanded to that court for further proceedings consonant herewith.

No costs. A public question.

STATE OF MICHIGAN–ss.

I, Donald F. Winters, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court of Lansing, this 29th day of December in the year of our Lord one thousand nine hundred and seventy-two.

/s/ Harold Hoag
Deputy Clerk

Warczak Motion for Suspension of Dues Deduction Authorizations
[Filed June 18, 1973]

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

[Title omitted in printing.]

MOTION FOR SUSPENSION OF DUES DEDUCTION AUTHORIZATIONS

Now come the plaintiffs by their attorneys and move this Honorable Court for an order declaring that check-off authorizations heretofore executed by employees of defendant Board of Education of the City of Detroit authorizing said defendant to deduct union dues and fees from wages of said employees and to pay over the moneys so deducted to defendant Detroit Federation of Teachers, be suspended and terminated. In support of such motion plaintiffs state as follows:

1. Defendants have heretofore entered into a collective bargaining agreement containing a compulsory agency shop clause under which plaintiffs and other employees of defendant Board of Education were required as a condition of employment to either join the union or pay to the union each month an agency fee equivalent in amount to the regular monthly union membership dues paid by teachers who are members of the union. The compulsory agency shop clause became effective January 26, 1970, and further provided that the refusal of any teacher to contribute the required

dues would be recognized as just and reasonable cause for termination of such teacher's employment within 60 days after notification from the union to their employer.

2. The compulsory agency fee agreement further provided that "Each employee in the bargaining unit shall execute an authorization for the deduction of Union dues or Agency Shop fees." Pursuant to this clause hundreds of teachers were induced and coerced into executing such check-off authorizations under threat of loss of their employment.

3. The amended complaint filed herein on January 16, 1970, requested this Court to declare the compulsory agency shop clause invalid for the various grounds stated therein. On January 19, 1970, the Court issued an opinion and order holding the compulsory agency shop clause valid under the Michigan Public Employment Relations Act, and granting summary judgment to defendants. An appeal from such order was duly noted by plaintiffs, and defendants filed a motion with the Michigan Supreme Court requesting that the case be heard on a by-pass appeal from the Michigan Court of Appeals.

4. On December 29, 1971, the Supreme Court of Michigan entered the following Order in this case: (Copy attached as Appendix A hereto)

> "On order of the Court (Black, J., not participating), leave to appeal is GRANTED. Pursuant to the decision in *Smigel et al,* Plaintiffs-Appellees v. *Southgate Community School District et al,* Defendants-Appellants, Docket No. 53008, the summary judgment for the defendants entered in Wayne county circuit court on January 23, 1970, on order of Honorable Charles Kaufman is hereby

> vacated and set aside and the cause is remanded to that court for further proceedings consonant herewith.
> No costs. A public question."

5. A motion for rehearing by defendants was denied by order of the Supreme Court of Michigan entered February 14, 1973, as follows: (Copy attached as Appendix B hereto)

> "On order of the Court, the "Motion for Rehearing" is considered, and the same is hereby DENIED for the reason that defendants and appellees have failed to establish that this Court's order of December 28, 1972 was erroneously entered."

6. Plaintiffs are informed and believe that under duress of the compulsory agency shop agreement entered into by defendants a large number of employees of defendant Board of Education executed union membership applications or agency fee dues deduction authorizations and that these employees have never been given notification of their right to revoke such authorizations following the decision of the Supreme Court of Michigan in *Smigel et al v. Southgate Board of Education* declaring compulsory agency shop agreements invalid and unenforceable under the Public Employment Relations Act. As a result, many such employees, who are involuntary union members or agency fee payers, continue to have union dues and fees deducted from their wages each month notwithstanding the invalidity and unenforceability of the compulsory agency fee agreement pursuant to which such check-off authorizations were executed.

7. Plaintiffs are informed and believe that it would be impossible at this time to ascertain which of the

employees of defendant Board of Education had voluntarily executed dues check-off authorizations and which of the said employees executed such authorizations under coercion and duress in fear of loss of their employment.

NOW THEREFORE, in view of the impossibility of ascertaining the identity of those employees of defendant Board of Education who are voluntary union members or agency fee payers, and those employees who signed check-off authorization cards under duress, plaintiffs respectfully move the Court to order

(1) that defendant Board of Education shall treat all check-off authorizations as ineffective and cancelled, and shall immediately cease making any payroll deductions based upon such authorizations; and

(2) that defendant Detroit Federation of Teachers shall have sixty days from the date of the Court's order to obtain newly executed membership dues check-off authorizations and deliver the same to the Board of Education which newly executed authorizations will then authorize the Board to resume payroll deductions in accordance therewith.

8. I hereby certify that I have complied with all provisions of the Wayne County Circuit Court Rule 9.4, on motion practice. The undersigned requested the concurrence of Mr. Theodore Sachs, Counsel for Defendant Detroit Federation of Teachers in the motion and the relief sought on June 15, 1973. Such

concurrence has been denied and it is necessary to present this motion.

Respectfully submitted,

/s/ Charles E. Keller
Charles E. Keller

/s/ John L. Kilcullen
John L. Kilcullen

Attorneys for Plaintiffs

KELLER, THOMA, McMANUS,
TOPPIN & SCHWARZE
1600 Penobscot Building
Detroit, Michigan 48226
Telephone: 313/965-7610

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Washington, D.C. 20006
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[Attachments omitted in printing.]

Warczak Answer to Motion to Suspend Dues Deduction Authorizations
[Filed July 5, 1973]

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

[Title omitted in printing.]

ANSWER TO MOTION TO SUSPEND DUES DEDUCTION AUTHORIZATIONS

Now come defendants by their attorneys, Marston, Sachs, O'Connell, Nunn & Freid, and in answer to Motion to Suspend Dues Deduction Authorizations, aver:

1. Answering paragraph 1, defendants respectfully refer the Court to the terms of said agreement which is of record herein.

2. Answering paragraph 2, defendants deny said allegations for the reason that same are contrary to fact.

3. Answering paragraph 3, defendants admit said allegations except as to plaintiffs' characterization of the agency shop clause.

4. Answering paragraph 4, defendants admit the same.

5. Answering paragraph 5, defendants admit the same.

6. Answering paragraph 6, defendants deny said allegations for the reason that said allegations are contrary to fact.

7. Answering paragraph 7, defendants deny that any employees involuntarily executed dues checkoff authorizations or executed such authorizations under coercion and duress.

8. In further answer, defendants aver that said motion is without merit and the Court without jurisdiction, in that:

(1) Plaintiffs fail to state a claim upon which relief can be granted.

(2) The cause is moot.

(3) Plaintiffs are without standing to raise the matters set forth in said motion.

(4) Plaintiffs are not the real parties in interest to raise the matters set forth in said motion.

(5) The relief prayed is not encompassed in plaintiffs' amended complaint.

(6) There is no basis in law or in equity for the relief prayed.

(7) There is no evidentiary basis for the relief prayed.

WHEREFORE, defendants pray that said motion be denied.

Respectfully submitted,

MARSTON, SACHS, O'CONNELL,
NUNN & FREID

by /s/ Theodore Sachs
Theodore Sachs

Attorneys for defendants
1000 Farmer
Detroit, Michigan 48226
965-3464

DATED: July 5, 1973

Motion of Defendants for Summary Judgment
[Filed July 5, 1973]

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE
COUNTY OF WAYNE

[Title omitted in printing.]

MOTION OF DEFENDANTS FOR SUMMARY JUDGMENT IN THEIR BEHALF [, ON REMAND] *

Now come defendants, Detroit Federation of Teachers, et al., by their attorneys, Marston, Sachs, O'Connell, Nunn & Freid (formerly Rothe, Marston, Mazey, Sachs & O'Connell), and move for summary judgment in their behalf, [upon remand,] * pursuant to GCR 1963, 117.2(1), for the reasons that:

1. Plaintiffs and added plaintiffs have failed to state a claim upon which relief can be granted.

2. The cause is moot.

I certify that I have complied with Wayne County Circuit Court Rule 9.4. Opposing counsel have declined to concur in this motion.

MARSTON, SACHS, O'CONNELL,
NUNN & FREID

by /s/ Theodore Sachs
Theodore Sachs
Attorneys for defendants
1000 Farmer
Detroit, Michigan 48226
965-3464

DATED: July 5, 1973.

*[Bracketed portions appear in *Warczak* motion only.]

Answer to Motion of Defendants for Summary Judgment
[Filed July 13, 1973]

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE
COUNTY OF WAYNE

[Title Omitted in printing.]

ANSWER TO MOTION OF DEFENDANTS FOR SUMMARY JUDGMENT IN THEIR BEHALF

Now come Plaintiffs by their attorneys, Keller, Thoma, McManus, Toppin & Schwarze, and Webster and Killcullen, and in answer to Motion of Defendants for Summary Judgment in Their Behalf, aver:

1. Answering paragraph 1, Plaintiffs deny said allegations for the reason that same are contrary to fact and law.

2. Answering paragraph 2, Plaintiffs deny said allegations for the reason that same are contrary to fact and law.

WHEREFORE, Plaintiffs pray that said motion be denied.

Respectfully submitted,

KELLER, THOMA, McMANUS,
TOPPIN & SCHWARZE

by /s/ Charles E. Keller
Charles E. Keller
Attorneys for Plaintiffs
1600 Penobscot Building
Detroit, Michigan 48226
(313) 965-7610

WEBSTER & KILCULLEN

by /s/ John L. Kilcullen
John L. Kilcullen

1747 Pennsylvania Ave., N.W.
Suite 1000
Washington, D.C. 20006
(202) 785-9500

DATED: July 12, 1973

Supplement and Amendment to Answer of Defendants
[Filed July 13, 1973]

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

[Title omitted in printing.]

SUPPLEMENT AND AMENDMENT TO ANSWER OF DEFENDANTS

Now come Detroit Board of Education, Detroit Federation of Teachers, Mary Ellen Riordan, John Elliott, Marilyn Klein, and Paul Richards, defendants herein, by their attorneys, Marston, Sachs, O'Connell, Nunn & Freid (formerly, Rothe, Marston, Mazey, Sachs, O'Connell, Nunn & Freid), and file this supplement and amendment to their answer heretofore filed, averring:

COUNT I.

Affirmative Defenses, paragraph 7:

7. Plaintiffs' action is moot in that,

(a) There has been enacted into law enrolled Senate Bill 433, immediately effective June 14, 1973, validating agency shop agreements. 1973 PA 25.

(b) The time period complained of has expired.

(c) A substantial number of the plaintiffs have become members of defendant Federation.

WHEREFORE, defendants pray for dismissal of said Count with costs to defendants.

COUNT II.

Affirmative Defenses.

Delete paragraph 4.

Add new paragraphs as follows:

4. Plaintiffs are without standing.

5. Plaintiffs' action is moot in that,

(a) There has been enacted into law enrolled Senate Bill 433, immediately effective June 14, 1973, validating agency shop agreements. 1973 PA 25.

(b) The time period complained of has expired.

(c) A substantial number of the plaintiffs have become members of the defendant Federation.

WHEREFORE, defendants pray for dismissal of said Complaint, with costs to defendants.

MARSTON, SACHS, O'CONNELL, NUNN & FREID

by /s/ Theodore Sachs
Theodore Sachs
Attorneys for defendants
1000 Farmer
Detroit, Michigan 48226
965-3464

DATED: July 13, 1973

Opinion of Wayne County Circuit Court
[Filed November 7, 1973]

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE
COUNTY OF WAYNE

CHRISTINE WARCZAK, ERNEST C. SMITH, JUDITH KENNEDY, AGNES STILLWELL, et al., Plaintiffs,
-vs- No. 145 080
THE BOARD OF EDUCATION OF THE CITY OF DETROIT, DETROIT FEDERATION OF TEACHERS, et al.,
Defendants.

D. LOUIS ABOOD, MARY ACETI, JOYCE C. ALEXANDER, et al.,
Plaintiffs,
-vs- No. 155 255
DETROIT BOARD OF EDUCATION, DETROIT FEDERATION OF TEACHERS, et al.,
Defendants.

OPINION RE: DEFENDANT's MOTION FOR SUMMARY JUDGMENT AND PLAINTIFFS' MOTION TO SUSPEND DUES DEDUCTIONS.

These matters come before this Court on the plaintiffs' motion to suspend dues deductions and defendant's motion for summary judgment. Both these matters eventuate as a result of the Michigan State Supreme Court's decision in the case of Smigel v Southgate School District, 388 Mich 531. It appears that this aforementioned case had issues before the

Supreme Court identical to the issues which this Court originally decided in the instant matters before this Court now.

It would appear that there is really only one issue before this Court at this time which will be dispositive of the entire controversy. That one issue is whether or not the Legislative Enactment 1973 PA 25 should be given retrospective effect or whether it should act only prospectively.

It appears that in the Smigel decision our Supreme Court in determining that the Public Employment Relations Act did not specifically provide for an agency shop, held that the agreement providing for same was contrary to the statute. If we look only to the words of the legislature in determining the legislative intent we find that the original act is silent as to an authorization for an agency shop. However, in looking at the amendment of the Public Employment Relations Act added by 1973 PA 25 there are clear and unequivocal words of intent of the legislature which indicate that the purpose of the amendatory act is to *reaffirm the continuing public policy of this state* that all employees in the bargaining unit shall share fairly in the financial support of their exclusive bargaining representative by paying to it a service fee which may be equivalent to the amount of dues required by members. It would appear to this Court that in setting forth a public policy not only prospectively but also indicating it has always been the public policy of this state to make such a provision, that the legislature is indicating that while the Supreme Court may have correctly read the statute, as originally promulgated, the legislature is now making clear what it meant so that the effect of the

Supreme Court's decision may be nullified. It should be noted here that it is the legislature which determines the public policy of a state and not a court.

This Court is at a loss to find any vested rights in the previous statute or in the decision of the Supreme Court redounding to the plaintiffs' benefit which would constitute a deprivation of any of their constitutional rights to have it now removed by the legislature. The defendants cite in their brief numerous instances where legislation may be retrospective. It will be unnecessary in this opinion to restate those cases or the points of law for which they stand.

This Court would hold that since the legislature specifically and validly indicated that it is reaffirming the continuing public policy of this State and inasmuch as this is an amendatory act, this Court would hold not only that the legislature intended retrospective application but that under all the circumstances pertaining to the matters now before the Court this is the only construction which squares with reality.

A judgment in accordance with this opinion may be presented.

/s/ CHARLES KAUFMAN
CHARLES KAUFMAN
Circuit Judge

November 5, 1973

A TRUE COPY
JOSEPH B. SULLIVAN
CLERK
BY /s/
Deputy Clerk

Summary Judgment for Defendants
[Filed December 5, 1973]

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

CHRISTINE WARCZAK, ERNEST C. SMITH, JUDITH KENNEDY, AGNES STILLWELL, et al., Plaintiffs, vs. THE BOARD OF EDUCATION OF THE CITY OF DETROIT, DETROIT FEDERATION OF TEACHERS, et al., Defendants. — No. 145 080

D. LOUIS ABOOD, MARY ACETI, JOYCE C. ALEXANDER, et al., Plaintiffs, vs. DETROIT BOARD OF EDUCATION, DETROIT FEDERATION OF TEACHERS, et al., Defendants. — No. 155 255

SUMMARY JUDGMENT FOR DEFENDANTS, UPON REMAND

At a session of said Court held in the City-County Building in the City of Detroit, Michigan on DEC 5 1973

PRESENT: HONORABLE CHARLES KAUFMAN, WAYNE CIRCUIT JUDGE.

These matters having come on to be heard on remand, following Order of the Michigan Supreme Court dated December 28, 1972 (in No. 145-080), on

(1) motion of defendants for summary judgment in their behalf pursuant to GCR 1963, 117.2(1), for the reason that plaintiffs and added plaintiffs fail to state a claim upon which relief can be granted and (2) on plaintiffs' motion to suspend dues deductions, and the Court having heard arguments thereon, and having considered the briefs of counsel thereon, and the Court being fully advised in the premises, and having rendered its Opinion dated November 5, 1973, to which reference is made, now, therefore,

IT IS ORDERED AND ADJUDGED that 1973 PA 25 (immediately effective June 14, 1973), § § 10(1)(c) Proviso and (2), specifically and validly, prospectively and retrospectively, authorizes agency shop agreements in public employment; and

IT IS FURTHER ORDERED AND ADJUDGED that plaintiffs, by their complaint and amended complaint, have failed to state a claim upon which relief can be granted; and

IT IS FURTHER ORDERED AND ADJUDGED that the agency shop clause in the collective bargaining agreement between the defendant Detroit Board of Education and defendant Detroit Federation of Teachers is valid and of full force and effect according to its terms; and

IT IS FURTHER ORDERED AND ADJUDGED that said agency shop clause does not contravene the Constitution of the United States or of the State of Michigan or the statutes of the State of Michigan.

IT IS FURTHER ORDERED AND ADJUDGED that plaintiffs' motion to suspend dues deductions is DENIED, for want of merit.

/s/ CHARLES KAUFMAN

WAYNE CIRCUIT JUDGE

Approved as to form only:

/s/ Charles E. Keller

Charles E. Keller

/s/ Charles Fine

Charles Fine

A TRUE COPY
JOSEPH B. SULLIVAN
CLERK
BY /s/
Deputy Clerk

Order Denying Plaintiffs' Motion for Rehearing
[Filed January 24, 1974]

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

[Title omitted in printing.]

ORDER DENYING PLAINTIFFS' MOTION FOR REHEARING

At a session of said Court held in the City-County Building in the City of Detroit, Michigan on JAN 24 1974

PRESENT: HONORABLE CHARLES KAUFMAN, WAYNE CIRCUIT JUDGE.

This matter having come on to be heard on January 4, 1974, on plaintiffs' Motion For Rehearing of the Order Denying Motion to Suspend Dues Deduction and Granting the Defendants' Motion For Summary Judgment; and the parties having filed briefs for and in opposition to said motion; and the parties having presented oral arguments thereon in open Court on the record; and the Court being fully advised in the premises and having indicated its reasons and decision on the record, now, therefore,

IT IS ORDERED that said Motion be and the same is hereby DENIED.

/s/ CHARLES KAUFMAN
WAYNE CIRCUIT JUDGE

[Clerk's certificate omitted in printing.]

Order Consolidating Appeals
[Entered March 22, 1974]

AT A SESSION OF THE COURT OF APPEALS OF THE STATE OF MICHIGAN, Held at the Court of Appeals in the City of Detroit, on the twenty-second day of March in the year of our Lord one thousand nine hundred and seventy-four.

Present the Honorable

T. JOHN LESINSKI
Presiding Judge
VINCENT J. BRENNAN
GEORGE N. BASHARA, Jr.
Judges

[Title omitted in printing.]

In these causes, on the Court's own motion, IT IS ORDERED that Docket #19465 be and the same hereby is CONSOLIDATED with Docket #19523 for the purpose of the hearing on the merits.

[Clerk's certificate omitted in printing.]

Extracts from Brief in Support of Claim of Appeal
[Filed April 11, 1974]

STATE OF MICHIGAN

IN THE COURT OF APPEALS
[Title omitted in printing.]

BRIEF IN SUPPORT OF CLAIM OF APPEAL

* * * * * *

I. STATEMENT OF QUESTIONS INVOLVED

A. WHETHER THE ALLEGATIONS OF FACT IN THE COMPLAINT MUST BE ASSUMED TO BE TRUE?

The Trial Court did not rule upon this issue. The Appellants contend that the answer is YES.

B. WHETHER ENFORCEMENT OF AN AGENCY SHOP PROVISION BY THE DEFENDANT DETROIT BOARD OF EDUCATION AND THE FEDERATION IS SUBJECT TO CONSTITUTIONAL LIMITATION?

The Trial Court did not rule upon this issue. The Appellants contend that the answer is YES.

C. WHETHER THE AGENCY SHOP CLAUSE CONTAINED IN THE DEFENDANTS' COLLECTIVE BARGAINING AGREEMENT, IMPOSED

UNDER COLOR OF SECTION 10 OF THE PUBLIC EMPLOYMENT RELATIONS ACT, VIOLATES PLAINTIFF TEACHERS' RIGHTS UNDER THE FIRST AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION?

The Trial Court answered this question NO. The Appellants contend that the answer is YES.

(1) WHETHER PLAINTIFF TEACHERS ARE ENTITLED TO THE FULL CONSTITUTIONAL RIGHTS OF SPEECH, ASSOCIATION AND BELIEF SECURED BY FIRST AMENDMENT?

The Trial Court by implication answered this question NO. The Appellants contend that the answer is YES.

(2) WHETHER PLAINTIFF TEACHERS' RIGHTS SECURED BY THE FIRST AND FOURTEENTH AMENDMENTS PROTECT THEM FROM THE IMPOSITION, THROUGH THE AGENCY SHOP CLAUSE, OF COMPULSORY MEMBERSHIP IN, OR PAYMENTS TO, THE FEDERATION AS A CONDITION OF EMPLOYMENT?

The Trial Court answered this question NO. The Appellants contend that the answer is YES.

(a) WHETHER THE AGENCY SHOP CLAUSE, ON ITS FACE, AND IN ITS OPERATION AND EFFECT, IMPERMISSIBLY COMPELS MEMBERSHIP IN THE FEDERATION?

The Trial Court by implication answered this question NO. The Appellants contend that the answer is YES.

(b) WHETHER THE AGENCY SHOP CLAUSE IMPERMISSIBLY COMPELS, AS A CONDITION OF EMPLOYMENT, THAT PLAINTIFF TEACHERS CONTRIBUTE MONETARY SUPPORT TO THE FEDERATION, CONTRARY TO THEIR RIGHTS OF SPEECH, ASSOCIATION AND BELIEF SECURED BY THE FIRST AMENDMENT?

The Trial Court by implication answered this question NO. The Appellants contend that the answer is YES.

(c) WHETHER THE INFRINGEMENT UPON PLAINTIFF TEACHERS' RIGHTS OF ASSOCIATION, SPEECH AND BELIEF SECURED BY THE FIRST AMENDMENT MUST BE SUPPORTED BY A DEMONSTRATED COMPELLING STATE INTEREST?

The Trial Court by implication answered this question NO. The Appellants contend that the answer is YES.

(d) WHETHER CONSTITUTIONAL QUESTIONS ARE SQUARELY PRESENTED HERE?

The Trial Court did not rule upon this issue. The Appellants contend that the answer is YES.

(3) WHETHER PLAINTIFF TEACHERS' RIGHTS SECURED BY THE FIRST AND FOURTEENTH AMENDMENTS PROTECT THEM FROM THE IMPOSITION, THROUGH THE

AGENCY SHOP CLAUSE, OF COMPULSORY PAYMENTS TO POLITICAL, ECONOMIC, SOCIAL, RELIGIOUS, SCIENTIFIC AND CULTURAL MATTERS OPPOSED BY THEM?

The Trial Court answered this question NO. The Appellants contend that the answer is YES.

D. WHETHER THE LEGISLATIVE INTENT OF THE 1973 AMENDMENT TO SECTION 10 OF THE PUBLIC EMPLOYMENT RELATIONS ACT WAS TO PERMIT EXACTION OF COMPULSORY AGENCY FEES FOR POLITICAL PURPOSES AND OTHER PURPOSES NOT GERMANE TO COLLECTIVE BARGAINING?

The Trial Court did not rule upon this issue. The Plaintiffs contend that the answer is YES.

E. WHETHER THE AGENCY SHOP CLAUSE CONTAINED IN THE DEFENDANTS' COLLECTIVE BARGAINING AGREEMENT, IMPOSED UNDER COLOR OF SECTION 10 OF THE PUBLIC EMPLOYMENT RELATIONS ACT, VIOLATES THE PLAINTIFF TEACHERS' RIGHTS UNDER THE NINTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION?

The Trial Court answered this question NO. The Appellants contend that the answer is YES.

F. WHETHER THE AGENCY SHOP CLAUSE CONTAINED IN THE DEFENDANTS' COLLECTIVE BARGAINING AGREEMENT, IMPOSED UNDER COLOR OF SECTION 10 OF THE PUBLIC EMPLOYMENT RELATIONS ACT, VIOLATES

THE PLAINTIFF TEACHERS' RIGHTS TO EQUAL PROTECTION OF THE LAWS SECURED BY THE FOURTEENTH AMENDMENT?

The Trial Court answered this question NO. The Appellants contend that the answer is YES.

G. WHETHER THE COMPELLING INTEREST TESTS CAN BE SATISFIED ON A MOTION FOR SUMMARY JUDGMENT?

The Trial Court did not rule upon this issue. The Appellants contend that the answer is NO.

H. WHETHER THE AGENCY SHOP CLAUSE, IMPOSED UNDER COLOR OF SECTION 10 (1) (c) AND (2) OF THE PUBLIC EMPLOYMENT RELATIONS ACT, WHEN CONSIDERED UNDER THE COMPELLING INTEREST TESTS, IS VOID ON ITS FACE?

The Trial Court answered this question NO. The Appellants contend that the answer is YES.

I. WHETHER THE AGENCY SHOP CLAUSE CONTAINED IN THE DEFENDANTS' COLLECTIVE BARGAINING AGREEMENT, IMPOSED UNDER COLOR OF SECTION 10 OF THE PUBLIC EMPLOYMENT RELATIONS ACT, VIOLATES APPELLANT TEACHERS' RIGHTS UNDER THE MICHIGAN CONSTITUTION?

The Trial Court answered this question NO. The Appellants contend that the answer is YES.

J. WHETHER THE LOWER COURT ERRED IN RULING THAT 1973 P.A. 25 IS TO BE GIVEN RETROSPECTIVE APPLICATION?

The Trial Court answered this question NO. The Appellants contend that the answer is YES.

K. WHETHER THE PLAINTIFF TEACHERS ARE ENTITLED TO INJUNCTIVE RELIEF?

The Trial Court answered this question NO. The Appellants contend that the answer is YES.

* * * * * *

APPENDIX "H"

STATE OF MICHIGAN
JOURNAL OF THE HOUSE
No. 27 - March 14, 1973

* * * * * *

House Bill No. 4243, entitled

A bill to amend section 10 of Act No. 336 of the Public Acts of 1947, entitled as amended "An act to prohibit strikes by certain public employees; to provide review from disciplinary action with respect thereto; to provide for the mediation of grievances and the holding of elections; to declare and protect the rights and privileges of public employees; and to prescribe means of enforcement and penalties for the violation of the provisions of this act," being section 423.210 of the Compiled Laws of 1970.

The bill was read a second time.

* * * * * *

Reps. Defebaugh and Damman moved to amend the bill as follows:

1. Amend page 2, line 9, after "TO", by striking out "THE AMOUNT OF DUES UNIFORMLY REQUIRED OF MEMBERS OF THE EXCLUSIVE BARGAINING REPRESENTATIVE", and inserting "THAT PORTION OF THE DUES THAT IS DIRECTLY ATTRIBUTABLE TO THE COST OF CONTRACT NEGOTIATION".
2. Amend page 2, line 16, after "EMPLOYEES", by striking out "EQUALLY".

The question being on the adoption of the amendments offered by Reps. Defebaugh and Damman,

Rep. Defebaugh demanded the yeas and nays.

The demand was supported.

* * * * * *

The question being on the adoption of the amendments offered by Reps. Defebaugh and Damman,

The amendments were not adopted, a majority of the members serving not voting therefor, by yeas and nays, as follows:

Roll Call No. 45 **Yeas–24**

* * * * * *

Nays–76

* * * * * *

Rep. Bryant moved to amend the bill as follows:

1. Amend page 2, line 10, after "REPRESENTATIVE", by inserting "WHICH APPROXIMATES THAT PORTION OF DUES ATTRIBUTABLE TO ACTUAL COLLECTIVE BARGAINING EXPENSES".
2. Amend page 2, line 16, after "EMPLOYEES", by striking out "EQUALLY".

The question being on the adoption of the amendments offered by Rep. Bryant,

Rep. Bryant demanded the yeas and nays.

The demand was supported.

The question being on the adoption of the amendments offered by Rep. Bryant,

The amendments were not adopted, a majority of the members serving not voting therefor, by yeas and nays, as follows:

Roll Call No. 46 **Yeas–27**

* * * * * *

Nays–73

* * * * * *

Reps. Cawthorne, Dively and Bradley moved to amend the bill as follows:

1. Amend page 2 by striking out all of lines 14, 15, 16, 17 and 18 and inserting

"(2) IT IS THE PURPOSE OF THIS AMENDATORY ACT TO REAFFIRM THE CONTINUING PUBLIC POLICY OF THIS STATE THAT THE STABILITY AND EFFECTIVENESS OF LABOR RELATIONS IN THE PUBLIC SECTOR REQUIRE, IF SUCH REQUIREMENT IS NEGOTIATED WITH THE PUBLIC EMPLOYER, THAT ALL EMPLOYEES IN THE BARGAINING UNIT SHALL SHARE FAIRLY IN THE FINANCIAL SUPPORT OF THEIR EXCLUSIVE BARGAINING REPRESENTATIVE BY PAYING TO THE EXCLUSIVE BARGAINING REPRESENTATIVE A SERVICE FEE WHICH MAY BE EQUIVALENT TO THE AMOUNT OF DUES UNIFORMLY REQUIRED OF MEMBERS OF

THE EXCLUSIVE BARGAINING REPRESENTATIVE.".

The question being on the adoption of the amendment offered by Reps. Cawthorne, Dively and Bradley,

Rep. Strang moved to amend the amendment as follows:

1. Amend the last "REPRESENTATIVE.", by inserting "NONE OF SUCH MONIES COLLECTED SHALL BE USED IN ANY PARTISAN POLITICAL CAMPAIGN.".

The question being on the adoption of the amendment to the amendment offered by Rep. Strang,

Rep. Strang demanded the yeas and nays.

The demand was supported.

The question being on the adoption of the amendment to the amendment offered by Rep. Strang,

The amendment to the amendment was not adopted, a majority of the members serving not voting therefor, by yeas and nays, as follows:

Roll Call No. 47 Yeas–40

* * * * * *

Nays–59

* * * * * *

The question being on the adoption of the amendment offered by Reps. Cawthorne, Dively, and Bradley,

The amendment was adopted, a majority of the members serving voting therefor.

Rep. Engler moved to amend the bill as follows:

1. Amend page 2, line 10, after "REPRESENTATIVE", by striking out the semicolon and inserting a period and "THE EXCLUSIVE BARGAINING

REPRESENTATIVE SHALL PROVIDE TO ALL BARGAINING UNIT EMPLOYEES ANNUALLY A DETAILED STATEMENT COVERING THE EXPENDITURES OF ALL FUNDS OF THE EXCLUSIVE BARGAINING REPRESENTATIVE;".

The question being on the adoption of the amendment offered by Rep. Engler,

After debate,

Rep. Raymond W. Hood demanded the previous question.

The demand was supported.

The question being, "Shall the main question now be put?"

The previous question was ordered.

The question being on the adoption of the amendment offered by Rep. Engler,

Rep. Mastin demanded the yeas and nays.

The demand was supported.

The question being on the adoption of the amendment offered by Rep. Engler,

The amendment was not adopted, a majority of the members serving not voting therefor, by yeas and nays, as follows:

Roll Call No. 48 Yeas–24

* * * * * *

Nays–76

* * * * * *

Rep. Baker moved to amend the bill as follows:

1. Amend page 2, section (2), last line, after "REPRESENTATIVE", by inserting "FOR BARGAINING PURPOSES ONLY".

The question being on the adoption of the amendment offered by Rep. Baker,

After debate,

Rep. Raymond W. Hood demanded the previous question.

The demand was supported.

The question being, "Shall the main question now be put?"

The previous question was ordered.

The question being on the adoption of the amendment offered by Rep. Baker,

Rep. Raymond W. Hood demanded the yeas and nays.

The demand was supported.

The question being on the adoption of the amendment offered by Rep. Baker,

The amendment was not adopted, a majority of the members serving not voting therefor, by yeas and nays, as follows:

Roll Call No. 49 **Yeas—32**

* * * * * *

Nays—71

* * * * * *

Rep. Bradley moved that the bill be placed on the order of Third Reading of Bills.

The motion prevailed, a majority of the members present voting therefor.

* * * * * *

APPENDIX "I"

STATE OF MICHIGAN
JOURNAL OF THE SENATE
No. 58 - May 22, 1973

* * * * * *

The following bill was read a third time:

Senate Bill No. 433, entitled

A bill to amend sections 1 and 7 of Act No. 336 of the Public Acts of 1947, entitled as amended "An act to prohibit strikes by certain public employees; to provide review from disciplinary action with respect thereto; to provide for the mediation of grievances and the holding of elections; to declare and protect the rights and privileges of public employees; and to prescribe means of enforcement and penalties for the violation of the provisions of this act," being sections 423.201 and 423.207 of the Compiled Laws of 1970.

The question being on the passage of the bill,

Senators Bishop and Fleming offered the following amendments:

(References are to Senate Journal No. 48, p. 664.)

1. Amend Committee Amendment No. 2, line 11, after "SERVICE FEE" by striking out "NOT MORE THAN THE AMOUNT OF DUES UNIFORMLY REQUIRED OF MEMBERS OF THE EXCLUSIVE BARGAINING REPRESENTATIVE" and inserting "EQUAL TO HIS PROPORTIONATE SHARE OF THE COST OF NEGOTIATING THE COLLECTIVE BARGAINING CONTRACT".

2. Amend Committee Amendment No. 2, subsection (2), line 6, after "MAY" by striking out "NOT MORE THAN THE AMOUNT OF DUES UNIFORMLY REQUIRED OF MEMBERS OF THE EXCLUSIVE BARGAINING REPRESENTATIVE" and inserting "EQUAL HIS PROPORTIONATE SHARE OF THE COST OF NEGOTIATING THE COLLECTIVE BARGAINING CONTRACT".

The amendments were not seconded, a majority of the Senators voting, not voting therefor.

Senator Bishop requested the yeas and nays.

The yeas and nays were not ordered, 1/5 of the Senators present not voting therefor.

Senators Bishop and Fleming offered the following amendment:

(References are to Senate Journal, No. 48, p. 664.)

Amend Committee Amendment No. 2, subsection (2), line 8, after "REPRESENTATIVE." by inserting "NO PORTION OF ANY MONEYS REQUIRED TO BE PAID AS UNION DUES OR SERVICE FEES SHALL BE USED DIRECTLY OR INDIRECTLY IN ANY PARTISAN OR NONPARTISAN POLITICAL CAMPAIGN.".

The amendment was not seconded, a majority of the Senators voting, not voting therefor.

Senator Bishop requested the yeas and nays.

The yeas and nays were ordered, 1/5 of the Senators present voting therefor.

The Senators voted as follows:

Roll Call No. 115 Yeas–12

* * * * * *

Nays–21

* * * * * *

The amendment was not seconded, a majority of the Senators voting, not having voted therefor.

* * * * * *

Senators Bishop and Fleming offered the following amendment:

(References are to Senate Journal No. 48, p. 664).

Amend Committee Amendment No. 2, subsection (2), line 8, after "REPRESENTATIVE." by inserting "NO PORTION OF ANY MONEYS REQUIRED TO BE PAID AS SERVICE FEES SHALL BE USED DIRECTLY OR INDIRECTLY IN ANY PARTISAN POLITICAL CAMPAIGN.".

The amendment was not seconded, a majority of the Senators voting, not voting therefor.

Senator Fleming requested the yeas and nays.

The yeas and nays were ordered, 1/5 of the Senators present voting therefor.

The Senators voted as follows:

Roll Call No. 118 Yeas–13

* * * * * *

Nays–21

* * * * * *

The amendment was not seconded, a majority of the Senators voting, not having voted therefor.

After debate,

Senator McCauley demanded the previous question.

On which motion Senator Bishop requested the yeas and nays.

The yeas and nays were not ordered, 1/5 of the Senators present not voting therefor.

The previous question was ordered, a majority of the Senators voting, voting therefor.

The question then being on the passage of the bill, the Senators voted as follows:

Roll Call No. 119 Yeas—28

* * * * * *

Nays—7

* * * * * *

The bill was passed, a majority of the Senators serving having voted therefor.

* * * * * *

Opinion of the Michigan Court of Appeals
[Entered March 31, 1975]

STATE OF MICHIGAN
COURT OF APPEALS
DIVISION 1

D. LOUIS ABOOD, MARY ACETI, JOYCE C. ALEXANDER, et al.,
Plaintiffs-Appellants,
v
DETROIT BOARD OF EDUCATION, DETROIT FEDERATION OF TEACHERS, et al.,
Defendants-Appellees.

MAR 31 1975

Docket #19465

CHRISTINE WARCZAK, et al.,
Plaintiffs-Appellants,
v
DETROIT BOARD OF EDUCATION, et al.,
Defendants-Appellees.

Docket #19523

BEFORE: McGregor, P.J., and J.H. Gillis and Quinn, J.J.

PER CURIAM

Plaintiffs Christine Warczak and others, all Detroit teachers, filed a complaint for declaratory judgment on November 7, 1969, challenging the constitutional and statutory validity of the agency shop provision in the collective bargaining agreement between the Detroit Board of Education and the Detroit Federation of Teachers. Plaintiffs filed the cause of action on behalf of themselves and all others similarly situated. Named as defendants were the Detroit Board of Education, the Detroit Federation of Teachers and all teachers who are members of the Federation.

Defendants moved for summary judgment, which was granted on January 19, 1970 by the trial court. Plaintiffs appealed the grant of the summary judgment. The Michigan Supreme Court granted plaintiffs leave to appeal and set aside the summary judgment entered in favor of defendants, based on the decision in *Smigel* v *Southgate School District*, 388 Mich 531; 202 NW2d 305 (1972). The case was remanded to the circuit court "for further proceedings consonant herewith."

Thereafter, in the trial court, plaintiffs filed a motion for suspension of dues deduction authorizations. The defendants, on the other hand, filed a motion for summary judgment based on the then recent amendment to the Public Employment Relations Act authorizing agency shop provisions in collective bargaining agreements between public employers and public employees. MCLA 423.210; MSA 17.455(10).

The trial court granted defendants' motion for summary judgment and denied plaintiffs' motion to

suspend dues deductions. In its opinion, the trial court stated that the amendment should be given retroactive effect. Plaintiffs appealed. On March 25, 1974, the Court of Appeals, on its own motion, entered an order consolidating this appeal with another pending appeal, *Abood et al* v *Detroit Board of Education, et al.*

In the *Abood* case, the complaint is essentially the same as that filed in the *Warczak* case, except that the named plaintiffs are more numerous and do not claim to represent any others than themselves. They also allege that they have been threatened with dismissal and are requesting injunctive relief to restrain the enforcement of the agency shop clause. A motion for summary judgment was granted in favor of defendants in that case and plaintiffs appealed.

I.

Should MCLA 423.210; MSA 17.455(10), effective June 14, 1973 and authorizing agency shop provisions in public employment contracts, be given retroactive effect so as to validate the agency shop provision in the contract entered into between the Detroit Federation of Teachers and the Detroit Board of Education?

In the *Smigel* case, *supra*, the Supreme Court of Michigan found that an agency shop provision in a contract between the Southgate Education Association and the Southgate Community School District was prohibited by § 10 of the Public Employments Relations Act [PERA].

Justice T.M. Kavanagh pointed out in his opinion that there was a significant distinction in Michigan's labor law between public and private employees.

> "Though MCLA 423.16; MSA 17.454(17) is nearly identical to MCLA 423.210; MSA 17.455(10) in respect to the requirement of employer neutrality, the statute regarding private employment includes one very important provision which is not found in the public employment relations act. MCLA 423.14; MSA 17.454(15) constitutes an authorization of union security clauses whether in the form of 'closed shop', 'union shop' or 'agency shop.'" 388 Mich at 539-540; 202 NW2d at 306.

Since such an authorization was not included by the Legislature in the PERA, the Supreme Court concluded that the agency shop provision in Smigel was prohibited by the PERA.

This was the state of the law when the Abood and Warczak cases were remanded to the circuit court. Subsequently, however, the Legislature amended the PERA to provide:

> "That nothing in this act or in any law of this state shall preclude a public employer from making an agreement with an exclusive bargaining representative as defined in section 11 to require as a condition of employment that all employees in the bargaining unit pay to the exclusive bargaining representative a service fee equivalent to the amount of dues uniformly required of members of the exclusive bargaining representative." MCLA 432.210; MSA 17.455(10).

In the same section, the Legislature gave some indication of its intent in enacting the amendment.

"(2) It is the purpose of this amendatory act to reaffirm the continuing public policy of this state that the stability and effectiveness of labor relations in the public sector require, if such requirement is negotiated with the public employer, that all employees in the bargaining unit shall share fairly in the financial support of their exclusive bargaining representative by paying to the exclusive bargaining representative a service fee which may be equivalent to the amount of dues uniformly required of members of the exclusive bargaining representative. MCLA 423.210; MSA 17.455(10).

In ruling that the amendment in question should be given retroactive application, the trial court stated that, by clear and unequivocal words of intent, the Legislature indicated its desire that the amendment be given such retroactive application. We respectfully disagree.

The most often-quoted statement of the law concerning retroactivity is found in *Detroit Trust Co.* v *Detroit*, 269 Mich 81, 84; 256 NW 811, 812-813 (1934):

> "We think it is settled as a general rule in this State, as well as in other jurisdictions, that all statutes are prospective in their operation excepting in such cases as the contrary clearly appears from the context of the statute itself.
>
> " ' "Indeed, the rule to be derived from the comparison of a vast number of judicial utterances upon this subject, seems to be, that, even in the absence of constitutional obstacles to retroaction, a construction giving to a statute a prospective operation is always to be preferred, unless a purpose to give it a retrospective force is expressed by clear and positive command, or to be inferred

> by necessary, unequivocal and unavoidable implication from the words of the statute taken by themselves and in connection with the subject matter, and the occasion of the enactment, admitting of no reasonable doubt, but precluding all question as to such intention." ' Endlich, Interpretation of Statutes, § 271." See also, *In re Davis' Estate*, 330 Mich 647, 650-651; 48 NW2d 151 (1951); *Briggs* v *Campbell, Wyant & Cannon*, 379 Mich 160, 164-165; 150 NW2d 752 (1967); *Olkowski* v *Aetna Casualty*, 53 Mich App. 497, 503; 220 NW2d 97 (1974).

Considering "the occasion of the enactment" of the amendment, one might conclude that it should be given retroactive effect. However, as noted in *Detroit Trust Co, supra*, that is only one element. While that element may favor retroactivity, it is still necessary to consider the language of the amendment itself and to determine the Legislature's intention.

The amendment in question states that its purpose is to "reaffirm the continuing public policy of this state that the stability and effectiveness of labor relations in the public sector require * * * that all employees in the bargaining unit shall share fairly in the financial support of their exclusive bargaining representative."

The Legislature's use of the word "reaffirm" seems to indicate that it was their feeling that such was always the policy of this State. However, *Smigel* held to the contrary. That the Legislature felt that it had always been the public policy of this State to permit agency shop clauses in the public sector, and that it said so in the amendment, is not enough to overcome the presumption favoring prospective application of the amendment.

Therefore, it is our conclusion that the trial court erred in giving retroactive application to the amendment.

II

Does the agency shop clause violate plaintiffs' First and Fourteenth Amendment rights securing freedom of speech and freedom of association?

In *Railway Employes' Department* v *Hanson*, 351 US 225, 238; 76 S Ct 714, 721; 100 L Ed 1112, 1134 (1956), the Supreme Court considered the question whether a union shop agreement forces workers into idealogical and political associations which violate their right to freedom of conscience, freedom of association, and freedom of thought protected by the Bill of Rights.

The Court held that "the requirement for financial support of the collective bargaining agency by all who receive the benefits of its work * * * does not violate either the First or Fifth Amendments." See also *Buckley* v *American Federation of Television & Radio Artists*, 496 F2d 305, 313 (1974).

However, the Court did not consider whether or not funds collected pursuant to an agency shop clause could constitutionally be used for purposes unrelated to collective bargaining. That issue was not presented in *Hanson*, but it is squarely before us in the case at bar.

MCLA 423.210; MSA 17.455(10) provides for "a service fee which may be equivalent to the amount of

dues uniformly required of members of the exclusive bargaining representative."

The political activities of labor unions are well-recognized. It is reasonable to assume that least a portion of every union's budget goes to activities that could be termed political, e.g., support of candidates sympathetic to the union cause and lobbying for the passage of bills in the legislature. Since the amendment to MCLA 423.210; MSA 17.455(10) does not limit the nonmember's contribution to his proportionate share of the costs of collective bargaining, it is clear that the amendment sanctions the use of nonunion members' fees for purposes other than collective bargaining.

In *International Association of Machinists* v *Street*, 367 US 740; 81 S Ct 1784; 6 L Ed 2d 1141 (1964), the United States Supreme Court faced a situation that is nearly on all fours with the case at bar. *Street* involved the same provision of the Railway Labor Act which was considered in *Hanson*, *supra*. But in *Street* six employees brought action, on behalf of themselves and of employees similarly situated, alleging that the money each was thus compelled to pay to hold his job was in substantial part used to finance the campaigns of candidates for federal and state offices whom he opposed, and to promote the propagation of political and economic doctrines, concepts and idealogies with which he disagreed.

The Supreme Court did not pass directly on the constitutional issues, instead construing the statute to deny railroad unions the right, over the employee's objection, to use his money to support political causes which he opposes. Since the statute under consideration here admits of no such construction, the constitutional issue requires decision.

We have before us then, two powerful countervailing public policies. We are asked, on the one hand, to preserve freedom of expression, and, on the other, to promote labor stability. But freedom of expression is a constitutional right so basic to our form of government that it must be jealously guarded. This is particularly true where, as here, employees are compelled by the government to support the collective bargaining activities of an organization which they prefer not to join. Justice Douglas expressed this concern well in his concurring opinion in *Street:*

> "If an association is compelled, the individual should not be forced to surrender any matters of conscience, belief or expression. He should be allowed to enter the group with his own flag flying, whether it be religious, political or philosophical; nothing that the group does should deprive him of the privilege of preserving and expressing his agreement, disagreement, or dissent, whether it coincides with the view of the group, or conflicts with it in minor or major ways; and he should not be required to finance the promotion of causes with which he disagrees." 367 US at 776; 81 S Ct at 1804; 6 L Ed 2d at 1165.

Therefore, we conclude that the agency shop clause, as prospectively authorized by the amendment to MCLA 423.210; MSA 17.455(10) could violate plaintiffs' First and Fourteenth Amendment rights.

First, however, it should be noted that this is not a true class action. As the Supreme Court pointed out in *Street, supra:*

> "Any remedies, however, would properly be granted only to employees who have made known to the union officials that they do not desire their funds to be used for political causes to which they object * * *. From these considerations, it follows

> that the present action is not a true class action, for there is no attempt to prove the existence of a class of workers who had specifically objected to the exaction of dues for political purposes." 367 US at 774; 81 S Ct at 1803; 6 L Ed 2d at 1164.

Thus it is that whatever relief is fashioned can only be applied to those Detroit teachers who have specifically protested the use of their funds for political purposes to which they object.

Further, the Supreme Court made it clear in *Street* that injunctive relief is not the proper remedy:

> "Restraining the collection of all funds from the appellees sweeps too broadly, since their objection is only to the uses to which some of their money is put. Moreover, restraining collection of the funds as the Georgia courts have done might well interfere with the appellant unions' performance of those functions and duties which the Railway Labor Act places upon them to attain its goal of stability in the industry." 367 US at 771; 81 S Ct at 1801; 6 L Ed 2d at 1162.

The Court suggested two possible remedies. 367 US at 774-775; 81 S Ct at 1803; 6 L Ed 2d at 1164-1165. The first is an injunction against expenditure for political causes opposed by each complaining employee of a sum, from those moneys to be spent by the union for political purposes, which is so much of the moneys exacted from him as is the proportion of the union's total expenditures made for such political activities to the total union budget.

The second method would be restitution to each individual employee of that portion of his money which the union expended, despite his notification, for the political causes to which he had advised the union he

was opposed. This is the method we prefer since, in each instance, the drawing up of a financial statement will be required to determine the proportion of union funds used for a particular purpose, and this method will least interfere with unions carrying out their daily functions.

To reiterate briefly, employees who are forced to contribute service fees to a collective bargaining representative may not be deprived of First Amendment freedom of expression. But, in order to preserve this right, the employee must make known to the union those causes and candidates to which he objects. The remedy then would be restitution to the employee of that portion of his money expended by the union over his objection.

In the case at bar the plaintiffs made no allegation that any of them specifically protested the expenditure of their funds for political purposes to which they object. Therefore the plaintiffs are not entitled to relief on this basis.

The judgment of the lower court must be reversed, however, as to the retroactive application given to MCLA 423.210; MSA 17.455(10).

Reversed and remanded. No costs, a public question being involved.

Order Reversing and Remanding
[Entered March 31, 1975]

AT A SESSION OF THE COURT OF APPEALS OF THE STATE OF MICHIGAN, Held at the Court of

Appeals in the City of Detroit, on the 31st day of March in the year of our Lord one thousand nine hundred and seventy-five.

Present the Honorable
Louis D. McGregor
Presiding Judge
John H. Gillis
Timothy C. Quinn
Judges

D. Louis Abood, Mary Aceti, Joyce
C. Alexander, et al.,
Plaintiffs-Appellants

vs

Detroit Board of Education,
Detroit Federation of Teachers, et al.,
Defendants-Appellees No. 19465

Christine Warczak, et al.,
Plaintiffs-Appellants

vs

Detroit Board of Education, et al.,
Defendants-Appellees No. 19523

This cause having been brought to this Court by appeal from Wayne County Circuit Court, and having been argued by counsel, and due deliberation had thereon, it is now ordered by the Court, that the

judgment of the trial court be and the same is hereby reversed and remanded. No costs, a public question being involved.

STATE OF MICHIGAN–ss.

I, Ronald L. Dzierbicki, Clerk of the Court of Appeals of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court of Appeals at Lansing, this 10th day of June in the year of our Lord one thousand nine hundred and seventy-five.

/s/ Ronald L. Dzierbicki
Clerk

Application for Rehearing
[Filed April 18, 1975]

STATE OF MICHIGAN

IN THE COURT OF APPEALS

[Title omitted in printing.]

APPLICATION FOR REHEARING

NOW COME Plaintiffs-Appellants, Christine Warczak, D. Louis Abood, et al., by and through their attorneys, Webster, Kilcullen & Chamberlain, and Keller, Thoma, Toppin & Schwarze, P.C., and respectfully petition the Court for an Order granting a rehearing. In support of such application, Plaintiffs-Appellants say as follows:

1. The opinion and order filed herein on March 31, 1975 overlooks or misapprehends certain critical points of law which are of major significance to plaintiffs' rights and the jurisprudence of the State of Michigan.

2. In certain important respects the conclusions stated in the opinion and order are in conflict with other decisions of this Court, and decisions of the United States Supreme Court.

3. The opinion and order leaves unanswered several questions respecting the relief, if any, to which appellants may be entitled upon remand of this case to the Circuit Court.

THEREFORE, it is prayed that this Honorable Court enter an Order granting a rehearing in this matter.

Respectfully submitted,

KELLER, THOMA, TOPPIN &
SCHWARZE, P.C.

By: /s/ Dennis B. DuBay
Dennis B. DuBay (P12976)
Attorneys for Plaintiffs-Appellants
1600 City National Bank Building
Detroit, Michigan 48226
(313) 965-7610

Dated: April 18, 1975
Detroit, Michigan

Application for Rehearing or Clarification
[Filed April 18, 1975]

STATE OF MICHIGAN

IN THE COURT OF APPEALS

DIVISION 1

[Title omitted in printing.]

APPLICATION FOR REHEARING OR CLARIFICATION

Now come appellees, by their attorneys, Marston, Sachs, O'Connell, Nunn & Freid, and move for rehearing or clarification, for the following reasons and grounds:

1. Although otherwise denying relief to plaintiffs-appellants, the Court reverses and remands, relative to "the retroactive application given to MCLA 423.210; MSA 17.455(10)."

2. The Court does not state the purpose of the remand.

3. In fact, there is no viable issue on remand, any putative issue having long since been moot and plaintiffs-appellants being without standing to assert any issue respecting retrospective application of the statute.

4. Furthermore, the Court's conclusion that the legislature did not intend (effectively intend?) retrospective application of the statute is erroneous.

5. Other aspects of the opinion, particularly dicta, are erroneous, although the Court's decision otherwise to dismiss plaintiffs-appellants' suit is proper.

This application for rehearing or clarification is based upon the files and records of this cause, upon GCR 1963, 820.4, and upon the affidavit hereunto annexed of Theodore Sachs, one of the attorneys for defendants-appellees.

WHEREFORE, defendants-appellees pray that application for rehearing be granted and/or the decision be clarified, rescinding the remand, and affirming the decision below.

Respectfully submitted,

MARSTON, SACHS, O'CONNELL, NUNN & FREID

by /s/ Theodore Sachs
Theodore Sachs

Attorneys for defendants-appellees

1000 Farmer
Detroit, Michigan 48226
965-3464

DATED: April 18, 1975.

[Affidavit of Theodore Sachs omitted in printing.]

Order Denying Rehearing
[Entered May 15, 1975]

AT A SESSION OF THE COURT OF APPEALS OF THE STATE OF MICHIGAN, Held at the Court of Appeals in the City of Detroit, on the 15th day of May in the year of our Lord one thousand nine hundred and seventy-five.

Present the Honorable
LOUIS D. McGREGOR,
Presiding Judge
JOHN H. GILLIS,
TIMOTHY C. QUINN,
Judges

[Title omitted in printing.]

In this cause a motion for rehearing having been filed by appellants, and nothing in opposition thereto having been filed by appellees, and a motion for clarification having been filed by appellees, and nothing in opposition thereto having been filed by appellants, and due consideration thereof having been had by the Court.

IT IS ORDERED that the motion for rehearing and the motion for clarification shall be and the same are DENIED.

[Clerk's certificate omitted in printing.]

Application for Leave to Appeal
[Filed June 3, 1975]

STATE OF MICHIGAN

IN THE SUPREME COURT

APPEAL FROM COURT OF APPEALS

[Title omitted in printing.]

APPLICATION FOR LEAVE TO APPEAL

NOW COMES Christine Warczak, et al and D. Louis Abood, et al by their attorneys, Keller, Thoma, Toppin & Schwarze, P.C. and Webster, Kilcullen & Chamberlain and make application for leave to appeal to this Honorable Court, from a final judgment entered in the Court of Appeals, stating:

1. This is an application for leave to appeal from a Decision of the Michigan Court of Appeals dated March 31, 1975 (Case Nos. 19465 and 19523) reviewing the Opinion, dated November 5, 1973, and the Judgment, entered December 5, 1973, and the Order denying Plaintiffs' Motion for Rehearing, dated January 24, 1974, of the Wayne County Circuit Court (Circuit Court Nos. 155 255 and 145 080).

2. Plaintiffs-Appellants timely filed an Application for Rehearing before the Court of Appeals on April 18, 1975. Defendants-Appellees filed a Motion for Clarification before the Court of Appeals on the same date. On May 15, 1975, the Court of Appeals denied Plaintiffs-

Appellants' Application for Rehearing and Defendants-Appellees' Motion for Clarification.

3. This application is timely filed and is made pursuant to Rule 853 of the Michigan General Court Rules of 1963.

4. A copy of the Decision of the Court of Appeals, dated March 31, 1975, is attached hereto as Appendix "A". A copy of the Order of the Court of Appeals, dated May 15, 1975, denying Plaintiffs-Appellants' Application for Rehearing and Defendants-Appellees' Motion for Clarification is attached hereto as Appendix "B". A copy of the Opinion of the Circuit Court dated November 5, 1973, is attached hereto as Appendix "C". A copy of the Judgment of the Circuit Court dated December 5, 1973, is attached hereto as Appendix "D". A copy of the Order of the Circuit Court, dated January 24, 1974, denying Plaintiffs Motion for Rehearing is attached hereto as Appendix "E".

5. The Plaintiffs-Appellants submit that there is a meritorious basis for this appeal and that their rights under the Constitution of the United States and the Constitution and laws of the State of Michigan will be violated unless that portion of the Decision of the Michigan Court of Appeals, from which leave to appeal is sought, is vacated by this Honorable Court as prayed by Appellants herein.

6. Attached hereto and made a part hereof is a Concise Statement of Proceedings and Facts.

7. This application is accompanied by a Brief in support thereof.

8. BASIS AND GROUNDS FOR APPEAL

8.1 The subject matter of the appeal involves legal principles of major significance to the jurisprudence of

the State. It involves both the constitutionality of an act of the legislature, Public Act 25 of 1973, and the authority of public employers to compel public employees to pay dues or fees to labor organizations as a condition of employment. In earlier granting application for leave to appeal in *Smigel v. Southgate Community School Dist.*, 388 Mich. 531; 202 NW2d 305 (1972), this Court has already recognized the importance of the issue of the permissible limits of collective bargaining agreements in public employment relative to the rights of individual public employees. Indeed, a federal district court is currently abstaining from deciding a constitutional and statutory challenge to another Michigan public sector "agency shop" arrangement in *Holman v. Board of Education*, 388 F. Supp. 792, 799-801 (ED Mich, 1975), pending resolution of the instant cases by the appellate courts of Michigan.

8.2 The decision of the Court of Appeals is clearly erroneous and will cause material injustice. Though holding that the use of funds collected under an "agency shop" arrangement for non-collective bargaining purposes could violate Plaintiff Teachers' constitutional right to freedom of expression and association, the Court of Appeals ruled that the Teachers were not entitled to relief because they had not made a timely objection to use of their "agency fees" for non-collective bargaining purposes. This denial of relief ignored Plaintiffs' specific objections in the complaints to *all* non-collective bargaining expenditures by the Federation. This ruling is expressly contrary to the holding of the United States Supreme Court in *Brotherhood of Railway Clerks v. Allen*, 373 US 113,

118-119 & n 6; 83 S.Ct. 1158, 1162 & n 6; 10 LEd 2d 235, 239-240 & n 6 (1963), that a dissenting employee need not allege and prove each distinct union political expenditure to which he objects, but need only manifest his objection to *any* political expenditures in his complaint. The decision below will cause material injustice in that Plaintiff Teachers must suffer either discharge from their employment or deprivation of their freedom of expression through involuntary payment of "service fees" which the Court of Appeals judicially noticed will be used for purposes other than collective bargaining.

8.3 The Decision of the Court of Appeals is in conflict with decisions of the United States Supreme Court and this Court, and other Court of Appeals' decisions.

(a) Having found that "agency shop" arrangements prospectively authorized by Public Act 25 of 1973 could violate public employees' rights to freedom of expression and association and that the Act could have been more narrowly drawn, the Court of Appeals failed to reach the logical and proper conclusion that the statute is unconstitutional on its face for reason of overbreadth. This result directly conflicts with the well-established rule that a statute capable of unconstitutional application in violation of fundamental freedoms cannot stand. E.g., *NAACP v. Button*, 371 US 415, 432-433; 83 S.Ct. 328, 337-338; 9 LEd 2d 405, 417-418 (1963); *Michigan State UAW Community Action Program Council*, 387 Mich. 506, 198 NW2d 385 (1972), *Sponick v. City of Detroit Police Department*, 49 Mich. App. 162, 179; 211 NW2d 674, 681 (1973).

(b) Although this case involves the question of whether the requirement of payment of agency fees by public employees violates constitutional rights to freedom of speech and association, the Court of Appeals did not apply the tests necessary to justify a governmental intrusion upon fundamental freedoms. This failure of the Court of Appeals clearly collides with the principles: (1) that public employment may not be denied or terminated for reasons which impinge upon freedom of association or speech, see, *e.g., Perry v. Sinderman*, 408 US 593, 597-598; 92 S.Ct. 2694, 2697-2698; 33 LEd 2d 570, 577 (1972) (and cases cited therein); and (2) that governmental action impinging upon the freedom of association or speech is unconstitutional unless it is the least restrictive means necessary to achieve a compelling state interest. See, *e.g., Shelton v. Tucker*, 364 US 479, 485-490; 81 S.Ct. 247, 250-253; 5 LEd 2d 231, 235-238 (1960); *Michigan State UAW Community Action Program Council v. Austin*, 387 Mich. 506, 516-517; 198 NW2d 385, 388-389 (1972).

(c) The Court of Appeals erroneously suggested that a restitutionary remedy would satisfy an infringement on Plaintiff-Appellant Teachers' constitutional rights. This is in conflict with *Cantwell v. Connecticut*, 310 US 296, 60 S.Ct. 900, 84 LEd 1213 (1940) which clearly invalidates any attempted prior restraint of First Amendment rights.

9. This application is based upon the files and records of the above-captioned causes, upon GCR 1963, 853, and upon the Brief in support filed herewith.

10. RELIEF

WHEREFORE, Plaintiffs-Appellants respectfully pray that this Honorable Court enter an Order granting leave to appeal in this matter.

Respectfully submitted,

KELLER, THOMA, TOPPIN &
SCHWARZE, P.C.

By: /s/ Charles E. Keller
Charles E. Keller (P15807)

By: /s/ Dennis B. DuBay
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[Affidavit of counsel and Jurat omitted in printing.]

[Attachments omitted in printing.]

Answer to Plaintiffs'-Appellants' Application for Leave to Appeal
[Filed July 7, 1975]

STATE OF MICHIGAN

IN THE SUPREME COURT

APPEAL FROM THE COURT OF APPEALS

[Title omitted in printing.]

ANSWER OF DEFENDANTS-APPELLEES TO PLAINTIFFS-APPELLANTS' APPLICATION FOR LEAVE TO APPEAL

Now come defendants-appellees, The Board of Education of the City of Detroit, Detroit Federation of Teachers, et al., by their attorneys, Marston, Sachs, O'Connell, Nunn & Freid, and in answer and opposition to the Application For Leave to Appeal of plaintiffs-appellants aver:

1. Answering paragraph 1, no answer is required.

2. Answering paragraph 2, defendants-appellees admit the allegations of said paragraph.

3. Answering paragraph 3, defendants-appellees admit the allegations of said paragraph.

4. Answering paragraph 4, defendants-appellees admit the allegations of said paragraph.

5. Answering paragraph 5, defendants-appellees deny said allegations as contrary to law.

6. Answering paragraph 6, defendants-appellees admit the allegations of said paragraph, but deny that said Concise Statement accurately sets forth the Proceedings and Facts below.

7. Answering paragraph 7, defendants-appellees admit the allegations, of said paragraph but deny the validity of the arguments therein contained.

8.1. Answering paragraph 8.1, defendants-appellees deny said allegations as contrary to fact and law.

8.2. Answering paragraph 8.2, defendants-appellees deny said allegations as contrary to fact and law.

8.3. Answering paragraph 8.3, defendants-appellees deny said allegations as contrary to fact and law.

In further answer, defendants-appellees aver that the purported federal constitutional arguments sought to be raised by plaintiffs-appellants have definitively been rejected by the United States Supreme Court and other courts, and that the United States Supreme Court has recently denied plaintiffs-appellants' counsel's applications for certiorari on identical issues in other cases.

WHEREFORE, defendants-appellees pray that said Application for Leave to Appeal of plaintiffs-appellants be denied, together with costs to defendants-appellees.

Respectfully submitted,

MARSTON, SACHS, O'CONNELL,
NUNN & FREID

by /s/ Theodore Sachs
Theodore Sachs (P19827)
Attorneys for defendants-appellees

1000 Farmer
Detroit, Michigan 48226
965-3464

DATED: July 3, 1975

[Affidavit of counsel and Jurat omitted in printing.]

Cross-Application by Defendants-Appellees for Leave to Appeal
[Filed July 7, 1975]

STATE OF MICHIGAN

IN THE SUPREME COURT
APPEAL FROM THE COURT OF APPEALS

[Title omitted in printing.]

CROSS-APPLICATION BY DEFENDANTS-APPELLEES FOR LEAVE TO APPEAL AND FOR PEREMPTORY OR SUMMARY REVERSAL, ON REMAND ISSUE, ONLY

Now come defendants-appellees, The Board of Education of the City of Detroit, Detroit Federation of Teachers, et al., by their attorneys, Marston, Sachs, O'Connell, Nunn & Freid, and make application for cross-leave to appeal and for peremptory or summary reversal from a final judgment entered in the Court of Appeals, in the manner and for the reasons following:

1. This is an application for cross-leave to appeal from a portion, only, of the decision of the Michigan Court of Appeals dated March 31, 1975 (Case Nos. 19465 and 19523), and the Order Denying Defendants-Appellees' subsequently timely motion for clarification thereof.

2. This cross-application is timely filed and is made pursuant to GCR 1963, 853, including Rule 853.2(5).

3. A copy of the Decision of the Court of Appeals dated March 31, 1975 is attached as Appendix "A" to

the Application for Leave to Appeal of Plaintiffs-Appellants. A copy of the Order of the Court of Appeals dated May 15, 1975, denying defendants-appellees' Motion for Clarification is attached as Appendix "B" to said Application. A copy of the Opinion of the Circuit Court dated November 5, 1973, is attached to said Application as Appendix "C." A copy of the Judgment of the Circuit Court dated December 5, 1973, is attached to said Application as Appendix "D." A copy of the Order of the Circuit Court dated January 24, 1974, denying plaintiffs' Motion For Rehearing is attached to said Application as Appendix "E."

4. Defendants-appellees submit that there is meritorious basis for this cross-appeal and that their rights under the laws of the State of Michigan may be violated unless that portion of the decision of the Michigan Court of Appeals from which cross-leave to appeal is sought, discussed below, is modified by this Honorable Court as prayed by defendants-appellees herein.

5. Attached hereto and made a part hereof is a Concise Statement of Proceedings and Facts.

6. This Cross-Application is accompanied by a Brief in support thereof.

BASIS AND GROUNDS FOR APPEAL

7. Although the Court of Appeals generally agreed with defendants-appellees and found plaintiffs-appellants' complaint to be without merit and subject to dismissal—with which defendants-appellees agree, of

course–the Court reversed and remanded "as to the retroactive application given to MCLA 423.210; MSA 17.455(10)." In fact, said retroactive application "issue" was moot, was not appropriately before the Court of Appeals for disposition, and was not appropriately subject to remand for any purpose affecting the parties to this litigation. Moreover, the Court of Appeals' disposition of the retrospectivity "issue" was plainly erroneous on the merits, and contrary to the settled principles of this jurisdiction respecting the retrospective effect of remedial and curative legislation. Consequently, the subject matter of this *cross*-appeal–unlike the appeal itself–involves legal principles of major significance to the jurisprudence of the State and is necessary to correct the clearly erroneous decision of the Court of Appeals on *that* issue which may cause material injustice if not corrected.

8. This cross-application is based upon the files and records of this cause, upon GCR 1963, 853, and upon the Brief in Support hereof.

RELIEF

9. Wherefore, defendants-appellees respectfully pray that this Honorable Court enter an order granting this cross-application for leave to appeal, and that it thereupon grant peremptory or summary reversal of the remand portion of the decision *only*, and thereby

reaffirm fully the summary judgment for defendants entered by the Circuit Court.

Respectfully submitted,

MARSTON, SACHS, O'CONNELL,
NUNN & FREID

by /s/ Theodore Sachs
Theodore Sachs

Attorneys for defendants-
appellees

1000 Farmer
Detroit, Michigan 48226
965-3464

DATED: July 3, 1975

[Affidavit of counsel and Jurat
omitted in printing.]

[Attachments omitted in printing.]

Order Denying Application and Cross-Application for Leave to Appeal
[Entered September 7, 1975]

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN, Held at the Supreme Court Room, in the City of Lansing, on the 17th day of September in the year of our Lord one thousand nine hundred and seventy-five.

Present the Honorable
THOMAS GILES KAVANAGH,
Chief Justice,
JOHN B. SWAINSON,
G. MENNEN WILLIAMS,
CHARLES L. LEVIN,
MARY S. COLEMAN,
JOHN W. FITZGERALD,
LAWRENCE B. LINDEMER
Associate Justices

[Title omitted in printing.]

On order of the Court, the application for leave to appeal by plaintiff-appellants is considered and the same is hereby DENIED because the appellants have failed to persuade the Court that the questions presented should be reviewed by this Court.

The application for leave to appeal by defendants-cross-appellants is also considered and the same is hereby DENIED because the cross-appellants have failed to persuade the Court that the questions presented should be reviewed by this Court.

Swainson, J., not participating.

[Clerk's certificate omitted in printing.]